

000735

**RECOMMENDATIONS**333  
3/27**COMMUNITY PLANNING GROUP/STAFF'S/PLANNING COMMISSION**

Project Manager **must** complete the following information for the Council docket:

**CASE NO. 1193**

**STAFF'S**

Please indicate recommendation for each action. ie: resolution/ ordinance

City Council adoption of the ordinance amending the Land Development Code and the City's Local Coastal Program related to the city's Affordable Housing Density Bonus Regulations (Chapter 12, Article 6, Division 7; Chapter 14, Article 1, Division 3; and Chapter 14, Article 3, Division 7).

City Council adoption of the resolution to certify the Supplement to Environmental Impact Report No. 96-0333 (Project 63422) and adopt the Findings and Statement of Overriding Considerations.

**PLANNING COMMISSION** (list names of Commissioners voting yea or nay)

**YEAS:** 5 (Chair Schultz, Vice-Chair Garcia, Griswold, Ontai, & Naslund)

**NAYS:** 0

**ABSTAINING:** 0

TO: Recommend approval of the proposed amendments related to affordable housing density bonus with the following recommendations:

- Investigate the relationship between parking needs and affordable housing to determine if the parking standards should be reduced.
- Look at the relationship between the locations of projects using density bonus and transit to see if there can be a further reduction in parking requirements.
- Attempt to simplify the way the regulations are written to make them more user friendly.
- Track the use of the density bonus provisions to learn where it is being used, the deviations requested, and how existing zoning patterns in areas of the city may be affecting its use.
- Consider allowing applicants that satisfy the affordable housing component of the regulations to request the incentive(s) provided in the regulations while forgoing the increase in density.
- Remove the option of the in-lieu fee in the Inclusionary Housing Ordinance.

**COMMUNITY PLANNING GROUP** (choose one)

LIST NAME OF GROUP:

- ☐ No officially recognized community planning group for this area.
- ☐ Community Planning Group has been notified of this project and has not submitted a recommendation.
- ☐ Community Planning Group has been notified of this project and has not taken a position.
- ☐ Community Planning Group has recommended approval of this project.
- ☐ Community Planning Group has recommended denial of this project.
- ☒ This is a matter of City-wide effect. The following community group(s) has taken a position on the item:

In favor:

Opposed: Community Planners Committee (CPC) – (minutes of February 22, 2005)

The Committee recommended the regulations be written to implement only the state requirements and did not supportive the city-initiated amendments.

By Dan Joyce  
Project Manager – Dan Joyce Senior Planner

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Office of  
The City Attorney  
City of San Diego

MEMORANDUM

(619) 236-6220

**DATE:** February 23, 2007  
**TO:** Honorable Mayor and City Council  
**FROM:** City Attorney  
**SUBJECT:** City Council Docket Item 335 for February 27, 2007: Proposed Alternative State Mandated Density Bonus Ordinance

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On February 27, 2007, the City Council will consider Item 335, a proposal to amend the Land Development Code to address changes in California affordable housing density bonus laws. *See* California Government Code Section 65915 – 65918. This Item was continued from the January 30, 2007 City Council meeting [Item 331; Amendments Related to Affordable Density Bonus].

Consistent with our Memorandum of February 20, 2007, we remain of the opinion that a continuance is warranted for a full and complete analysis of the important issues raised by Councilmember Donna Frye's Memorandum of February 20, 2007.

In light of these issues and other concerns recently identified, the City Attorney proposes an alternative Ordinance that more closely models State Density Bonus Law [Government Code Sections 65915-65918] should the City Council deny the requested continuance and feel compelled to take action on February 27th. The alternative Ordinance is enclosed herein with this Memorandum. Also enclosed herein is additional written guidance provided originally to the County Counsel's Association of California relative to the recently enacted State Density Bonus Laws.

MICHAEL J. AGUIRRE, City Attorney

By



Karen Heumann  
Assistant City Attorney

Honorable Mayor and City Council

February 23, 2007

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**000738**

Attachment: Alternative State Mandated Density Bonus Ordinance (O-2007-40); and,

*A Public Agency Guide to California Density Bonus Law* by Barbara E. Kautz,  
Adapted from a Presentation for the County Counsels' Association of California  
(Fall 2005).

cc: Jim Waring, Deputy Chief, Land Use and Economic Development  
Bill Anderson, Director, City Planning and Community Investment  
Elizabeth Maland, City Clerk

000739

ORDINANCE NUMBER O-\_\_\_\_\_ (NEW SERIES)

DATE OF FINAL PASSAGE \_\_\_\_\_

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO AMENDING CHAPTER 14, ARTICLE 3, DIVISION 7, SECTIONS 143.0710, 143.0715, 143.0720, 143.0725, 143.0730, 143.0740, AND 143.0750, AND AMENDING CHAPTER 14, ARTICLE 1, DIVISION 3, BY AMENDING SECTION 141.0310(b), ALL RELATING TO THE AFFORDABLE HOUSING DENSITY BONUS REGULATIONS.

WHEREAS, the City of San Diego [City] is required by Section 65915 of the California Government Code [State Density Bonus Law] to provide a developer with a density bonus and other incentives for the production of affordable and senior housing units or the donation of land within a proposed development if the developer meets certain requirements [Density Bonus Regulations]; and

WHEREAS, the City desires to provide incentives to provide Inclusionary Housing on-site; and

WHEREAS, the City Council adopted Density Bonus Regulations Citywide on December 9, 1997 by O-18451; and

WHEREAS, the City Council proposed amendments to its Density Bonus Regulations on June 21, 1999, by O-18654, subject to the approval of the California Coastal Commission for the areas of the City within the Coastal Overlay Zone; and

WHEREAS, on November 13, 2000, the California Coastal Commission failed to approve the June 21, 1999, amendments for the areas of the City within the Coastal Overlay Zone, resulting in two different sets of Density Bonus Regulations, one effective outside of the

Coastal Overlay Zone (O-18654) and one effective inside the Coastal Overlay Zone (O-18451);  
and

WHEREAS, the City's Density Bonus Regulations are inconsistent with recent  
amendments to the state Density Bonus Law; and

WHEREAS, the City desires to update its Density Bonus Regulations to ensure  
conformance with the State Density Bonus Law both inside and outside of the Coastal Overlay  
Zone; NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That Chapter 14, Article 3, Division 7, is amended by amending Sections  
143.0710, 143.0715, 143.0720, 143.0725, 143.0730, 143.0740, and 143.0750 to read as follows:

**Article 3: Supplemental Housing Development Regulations**

**Division 7: Affordable Housing Density Bonus Regulations**

**§ 143.0710 Purpose of Affordable Housing Density Bonus Regulations**

The purpose of these regulations is to provide opportunities for increased residential density  
to developers who guarantee that a portion of their housing *development* will be available to  
*moderate income, low income, very low-income*, or senior households. The term *housing  
development* as used herein has the same meaning as defined in Section 65915(j) of the  
California Government Code. The City's Density Bonus Regulations are intended to  
materially assist the housing industry in providing adequate and affordable housing for all  
economic segments of the community and to provide a balance of housing opportunities for  
*moderate income, low income, very low-income*, and senior households throughout the City. It  
is intended that the affordable housing *density* bonus and any additional *housing development*

incentives be available for use in all *housing developments* as provided herein and as allowed by applicable law, and using criteria and standards provided in the Progress Guide and General Plan, as defined by the San Diego Housing Commission; that requests be processed by the City of San Diego, and that they be implemented by the President and Chief Executive Officer of the San Diego Housing Commission. It is also intended that the City's Density Bonus Regulations implement the provisions of California Government Code Sections 65915 through 65918.

**§ 143.0715 When Affordable Housing Density Bonus Regulations Apply**

This division applies to any *housing development* entirely situated on land zoned for five or more pre-density bonus dwelling units where an *applicant* proposes *density* on said land beyond that permitted by the applicable zone in exchange for either of the following as set forth in this division:

- (a) A portion of the total *dwelling units* in the *housing development* being reserved for *moderate, low, or very low-income* households or for senior citizens through a written agreement with the San Diego Housing Commission; or
- (b) The donation of land, as provided herein and pursuant to Government Code Sections 65915 through 65918.

**§ 143.0720 Density Bonus in Exchange for Affordable Housing Units**

- (a) A *housing development* may qualify for a *density* bonus and incentives as described in this division, for any *housing development* as provided for herein and as allowed by applicable law, for which a written agreement, and a deed of trust securing the agreement, is entered into by the *applicant* and the President and Chief Executive

Officer of the San Diego Housing Commission. The written agreement and deed of trust in favor of the San Diego Housing Commission are to be recorded in the Office of the Recorder of the County of San Diego as an encumbrance against the *housing development*.

- (b) The density bonus units authorized by this division shall be exempt from the Inclusionary Housing Regulations set forth in Charter 14, Article 2, Division 13.
- (c) A rental unit *density* bonus agreement shall utilize the following qualifying criteria consistent with the procedures established by the San Diego Housing Commission;
  - (1) Housing for Senior Citizens – The *development* consists of housing for senior citizens or qualifying residents as defined under California Civil Code Sections 51.3 and 51.12, where at least 35 *dwelling units* are provided; or a mobilehome park that limits residency based on age requirements for housing for older persons pursuant to California Civil Code § 798.76 or 799.5.
  - (2) Affordable housing units –
    - (A) *Low income* – At least 10 percent of the pre-*density* bonus units in the *development* shall be affordable, including an allowance for utilities, to *low income* households at a rent that does not exceed 30 percent of 60 percent of area median income, as adjusted for assumed household size; or
    - (B) *Very low income* – At least 5 percent of the pre-*density* bonus units in the *development* shall be affordable, including an allowance for utilities, to *very low income* households at a rent that does not exceed 30 percent of

50 percent of the area median income, as adjusted for assumed household size.

- (C) The affordable units shall be designed units, be comparable in bedroom mix and amenities to the market-rate units in the *housing development*, and be dispersed throughout the *housing development*.
- (3) The *dwelling units* shall remain available and affordable for a period of at least 30 years or longer as may be required by other laws.
- (d) A for-sale unit density bonus agreement shall utilize the following qualifying criteria consistent with the procedures established by the San Diego Housing Commission:
  - (1) For-sale unit density bonus shall only be available to common interest *development*, as defined by California Civil Code § 1351, where at least 10 percent of the pre-*density* bonus units in the *development* shall be initially sold and affordable to *moderate income* households at a price that is affordable to families earning 110 percent of the area median income as adjusted or assumed household size, as determined by the San Diego Housing Commission, and where all of the *dwelling units* are offered to the public for purchase.
  - (2) Prior to, or concurrent with, the sale of each *density* bonus affordable unit, the *applicant* shall require the buyer to execute and deliver a promissory note in favor of the San Diego Housing Commission so that the repayment of any initial subsidy is ensured.
  - (3) Each for-sale unit shall be occupied by the initial owner at all times until the resale of the unit.



- (4) Upon the first resale of a unit the seller shall comply with all conditions regarding the sale of a unit, as applied by the San Diego Housing Commission, and as set forth in California Government Code section 65915(c)(2).
- (5) The affordable units shall be designated units, be comparable in bedroom mix and amenities to the market-rate units in the *development*, and be dispersed throughout the *development*.
- (e) The density bonus units shall have recorded against them a Declaration of Covenants, Conditions and Restrictions in favor of the San Diego Housing Commission that shall enjoy first lien position and shall be secured by a deed of trust that may be recorded against the project or unit, as applicable, prior to construction or permanent financing.
- (f) Provisions shall be made by the San Diego Housing Commission for certification of eligible tenants and purchasers, annual certification of property owner compliance, payment of a monitoring fee to the San Diego Housing Commission, as adjusted from time to time, for monitoring of affordable unit requirements, and any other terms that the San Diego Housing Commission determines are needed to implement the provisions and intent of this division and State law.

**§ 143.0725 Density Bonus Provisions**

A *housing development* entirely situated on land zoned for five or more pre-density bonus dwelling units for which an applicant is seeking a density bonus is subject to the following:

- (a) For senior citizen housing meeting the criteria of Section 143.0720(c)(1), the *density* bonus shall be 20 percent.

- (b) For *housing development* that includes affordable housing, pursuant to the Inclusionary Housing Regulations in Chapter 14, Article 2, Division 13, and that affordable housing is located onsite, that *housing development* shall be entitled to a *density* bonus, equal to the number of affordable units provided onsite, up to a maximum of 10 percent of the pre-*density* bonus units. The increased *density* shall be in addition to any other increase in *density* allowed in this division, up to a maximum combined *density* increase of 35 percent.
- (c) For *housing development* meeting the criteria for *low income* in Section 143.10720(c)(2)(A), the *density* bonus shall be calculated as set forth in Table 143-07A. The increased *density* shall be in addition to any other increase in *density* allowed in this division, up to a maximum combined *density* increase of 35 percent. For *housing development* meeting the same criteria within the Centre City Planned District, the bonus shall apply to the maximum allowable *floor area ratio* applicable to the *housing development* consistent with Section 151.0309(e).
- (d) For *housing development* meeting the criteria for *very low income* in Section 143.0720(c)(2)(B), the *density* bonus shall be calculated as set forth in Table 143-07B. The increased *density* shall be in addition to any other increase in *density* allowed in this division, up to a maximum combined *density* increase of 35 percent. For *housing development* meeting the same criteria within the Centre City Planned District, the bonus shall apply to the maximum allowable *floor area ratio* applicable to the *housing development* consistent with Section 151.0309(e).
- (e) For *housing development* meeting the criteria for *moderate income* in Section 143.0720(d), the *density* bonus shall be calculated as set forth in Table 143-07C. The

increased *density* shall be in addition to any other increase in *density* allowed in this division, up to a maximum combined *density* increase of 35 percent. For *housing development* meeting the same criteria within the Centre City Planned District, the bonus shall apply to the maximum allowable *floor area ratio* applicable to the *housing development* consistent with Section 151.0309(e).

- (f) If the *premises* are located in two or more zones, the number of *dwelling units* permitted in the *housing development* is the sum of the *dwelling units* permitted in each of the zones. Within the *housing development*, the permitted number of *dwelling units* may be distributed without regard to the zone boundaries.
- (g) Where the *housing development* consists of two or more specifically identified parcels, whether contiguous or noncontiguous, the maximum number of *dwelling units* permitted on each parcel is calculated based on the area of that parcel.
- (h) Where the *housing development* consists of two or more noncontiguous parcels lying within two or more community planning areas, the *dwelling units* reserved at levels affordable by *moderate income*, *low income* or *very low income* households shall be distributed among community planning areas in the same proportion as the total number of *dwelling units* constructed within the *housing development*.

**§ 143.0730 Density Bonus in Exchange for Donation of Land**

An *applicant* for *tentative map*, *parcel map*, or *housing development* permit, may donate and transfer land to the City for *development* with affordable housing units, in exchange for a *density* bonus, in accordance with California Government Code Section 65915, provided the land to be transferred meets all of the following criteria:

- (a) The applicant donates and transfers the land no later than the date of approval of the final subdivision map, parcel map, or residential development application;
- (b) The developable acreage and zoning classification of the land being transferred are sufficient to permit construction of units affordable to very low income households in an amount not less than 10 percent of the number of residential units of the proposed development;
- (c) The transferred land is at least one acre in size or of sufficient size to permit development of at least 40 units;
- (d) The transferred land has the appropriate general plan designation;
- (e) The transferred land is appropriately zoned for development as affordable housing;
- (f) The transferred land is or will be served by adequate public facilities and infrastructure;
- (g) The transferred land has appropriate zoning and development standards to make the development of the affordable units feasible.
- (h) No later than the date of approval of the final subdivision map, parcel map, or of the residential development, the transferred land has all of the permits and approvals, other than building permits, necessary for the development of the very low income housing units on the transferred land, except that the City may subject the proposed development to subsequent design review to the extent authorized by subdivision (i) of Section 65584.3 of the California

Government Code if the design is not reviewed by the City prior to the time of transfer;

- (i) The land to be transferred is within the boundary of the proposed *development* or, if the City agrees, within one-quarter mile of the boundary of the proposed *development*;
- (j) The transferred land and the affordable units shall be subject to a deed restriction ensuring continued affordability of the units consistent with paragraphs (1) and (2) of subdivision (c) of Section 65915 of the California Government Code, which shall be recorded on the property at the time of dedication; and,
- (k) The land shall be transferred to the City or to a housing developer approved by the City. The City may require the applicant to identify and transfer the land to the developer.

**§ 143.0740 Housing Development Incentives for Affordable Housing Density Bonus Projects**

- (a) The City shall determine whether to grant an incentive requested by an *applicant*, to the extent allowed by State law and as set forth in this Section.
  - (1) An incentive means any of the following:
    - (A) A deviation to a *development* regulation.
    - (B) Approval of a mixed use *development* in conjunction with the housing project if the commercial, office, or industrial uses will reduce the cost of the *housing development*; and if the commercial, office, or industrial uses are compatible

with the housing project and the existing or planning development in the area where the proposed housing project will be located;

- (C) Any other regulatory incentive proposed by the applicant, other than a waiver from a required permit, which results in identifiable, financially sufficient, and actual cost reductions.
- (2) Pursuant to the California Density Bonus Law, Government Code Section 65915(k), the granting of an incentive shall not be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, or other discretionary approval. Since this provision is declaratory of existing law, the City will process the request for a density bonus and the request for the corresponding incentive(s) through the same mechanism provided as part of any other discretionary approvals required in conjunction with the subject *housing development*. The City retains full discretion to approve or deny the *housing development* for reasons unrelated to the density bonus or incentives.
- (3) Nothing in this division shall be construed to require the City or any of its related legal entities, including the San Diego Housing Commission, to provide a direct financial incentive, including the provision of land, or the waiver of fees or dedication requirements.
- (4) An applicant seeking a density bonus may submit a proposal to the City for specific incentive(s) as identified in 143.0740(b), and may request a meeting with the City, where the *housing development* meets the requirements of Sections 143.0720(c) or (d). In order to qualify for incentive(s), the applicant shall sufficiently demonstrate to the

satisfaction of the City that the requested incentive(s) result in identifiable, financially sufficient and actual cost reductions. The City shall determine whether to grant any incentives. If the City determines that incentive(s) shall not be granted, the City shall make a written finding based upon substantial evidence, of either of the following:

- (A) The incentive is not required in order to provide for affordable housing costs, as defined in California Health and Safety Code sections 50052.5, or for rents for the targeted units to be set as specified in California Government Code Section 65915(c); or,
  - (B) The incentive would have a specific adverse impact, as defined in California Government Code Section 65589.5(d)(2), upon health and safety or the physical environment or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the *development* unaffordable to *low- and moderate- income* households.
- (5) Any *housing development* eligible for an incentive within the Coastal Overlay Zone and any *housing development* within the area identified on Map C-380 shall be subject to the regulations of Chapter 13, Article 2, Division 5, Coastal Height Limit Overlay Zone in accordance with the certified *Local Coastal Program*. Nothing herein shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act (Division 20 (commencing with Section 30000) of the Public Resources Code.

(b) The following incentives are available consistent with Table 143-07A, Table 143-07B and Table 143-07C:

- (1) One incentive for development that includes any of the following:
  - (A) At least 10 percent of the total units for low income households;
  - (B) At least 5 percent of the total units for very low income households; or
  - (C) At least 10 percent of the total units for moderate income households in common interest development.
- (2) Two incentives for development that includes any of the following:
  - (A) At least 20 percent of the total units for low income households;
  - (B) At least 10 percent of the total unit for very low income households; or
  - (C) At least 20 percent of the total units for moderate income households in common interest development.
- (3) Three incentives for development that includes any of the following:
  - (A) At least 30 percent of the total units for low income households;
  - (B) At least 15 percent of the total units for very low income households; or
  - (C) At least 30 percent of the total units for moderate income households in common interest development.

*Low Income Density Bonus Table 143-07A*

Percent <i>Low Income</i> Units	Percent Density Bonus	Number of Incentives
10	20	1
11	21.5	1
12	23	1



13	24.5	1
14	26	1
15	27.5	1
16	29	1
17	30.5	1
18	32	1
19	33.5	1
20-29	35	2
=30	35	3

Very Low Income Density Bonus Table 143-07B

Percent <i>Very Low Income</i> Units	Percent Density Bonus	Number of Incentives
5	20	1
6	22.5	1
7	25	1
8	27.5	1
9	30	1
10	32.5	2
11-14	35	2
= 15	35	3

Moderate Income Density Bonus Table 143-07C

Percent <i>Moderate Income</i> Units	Percent Density Bonus	Number of Incentives
10	20	1
11	21	1
12	22	1
13	23	1
14	24	1
15	25	1
16	26	1
17	27	1
18	28	1
19	29	1
20	30	2
21	31	2
22	32	2
23	33	2
24	34	2
25-29	34	2
= 30	35	3

- (c) Child Care Center: *Housing development* that meets the criteria in 143.0720 and includes a child care center as defined in Section 141.0606(a)(2) as part of, or adjacent to, such *development* shall be entitled to an additional density bonus or incentive provided that:
- (1) The child care center remains in operation for the greater of 30 years, or the period of time established by Section 143.0720(c)(3);
  - (2) The percentage of children from *low, very low, or moderate* income households attending the child care center is equal to or greater than the percentage of those same households required in the *housing development*;
  - (3) The additional density bonus or incentive required is either:
    - (A) An additional *density* bonus in an amount equal to the amount of square feet in the child care center up to a maximum combined *density* increase of 35 percent; or
    - (B) An additional incentive that contributes significantly to the economic feasibility of the construction of the child care center; and
  - (4) The City finds, based upon substantial evidence, that the community is inadequately served by child care centers.
- (d) Parking: In addition to any other incentive, and upon the request of an *applicant* that proposes a *housing development* meeting the criteria of Sections 143.0720(c) or (d) the City shall apply the following vehicular parking ratio, inclusive of handicapped and guest parking:
- (1) Zero to one bedroom: one onsite parking space
  - (2) Two to three bedrooms: two onsite parking spaces

- (3) Four and more bedrooms: two and one-quarter parking spaces
- (4) Reductions to the parking-ratios shall be granted as follows:
  - (i) *Housing development* that is at least partially within a *transit area* as described in Chapter 13, Article 2, Division 10 (Transit Area Overlay Zone) or that is subject to Chapter 13, Article 2, Division 11 (Urban Village Overlay Zone), shall receive a 0.25 space per *dwelling unit* reduction in the parking ratio for the entire development.
  - (ii) *Housing development* that includes *dwelling units* limited to occupancy by *very low income* households shall receive a 0.25 space reduction in the parking ratio for each *dwelling unit* that is limited to occupancy by a *very low income* household.
  - (iii) *Housing development* that includes *dwelling units* limited to occupancy by *very low income* households, and is at least partially within *transit area*, shall receive a 0.50 space reduction in the parking ratio for each *dwelling unit* that is limited to occupancy by a *very low income* household.
- (5) For purposes of this division, a *housing development* may provide onsite parking through tandem parking or uncovered parking, but not through on-street parking or parking within a required front yard setback.

**§ 143.0750 Housing Development in the Coastal Overlay Zone**

- (a) *Housing development* within the Coastal Overlay Zone that proposes to use the regulations of this division shall be subject to the applicable certified land use plan and

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implementing ordinances, including a Coastal Development Permit (Chapter 12, Article 6, Division 7), as described in Chapter 13, Article 2, Division 4.

Section 2. That Chapter 14, Article 1, Division 3, is amended by amending Section 141.0310, to read as follows:

**§ 143.0310 Housing for Senior Citizens**

Housing for Senior Citizens may be permitted with a Conditional Use Permit decided in accordance with Process Three in the zones indicated with a "C" in the Use Regulations Tables in chapter 13, Article 1 (Base Zones) subject to the following regulations.

- (a) [no change].
- (b) Housing for Senior Citizens may be permitted a density bonus as provided in Chapter 14, Article 3, Division 7 (Affordable Housing *Density* Bonus Regulations).
- (c) through (e) [no change].

Section 3. That a full reading of this ordinance is dispensed with prior to its final passage, a written or printed copy having been available to the City Council and the public a day prior to its final passage.

Section 4. That this ordinance shall take effect and be in force on the thirtieth day from and after its final passage, except that the provisions of this ordinance applicable inside the Coastal Overlay Zone, which are subject to California Coastal Commission jurisdiction as a City of San Diego Local Coastal Program amendment, shall not take effect until the date the California Coastal Commission unconditionally certifies those provisions as a local coastal program amendment.

Section 5. City departments may not issue permits outside the Coastal Overlay Zone for *housing development* that is inconsistent with this ordinance unless complete applications for the permits were submitted to the City prior to the date of adoption of this ordinance.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By



Karen Heumann  
Assistant City Attorney

SMT:kat:pev

01/08/07

01/22/07/COR.COPY;

01/30/07 COR.COPY 1

02/23/07 Alternative State Mandated Density Bonus

Or.Dept:City Attorney

O-2007-40

MMS#3273

Alternative State Mandated Density Bonus Ordinance

**000757**

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of \_\_\_\_\_.

ELIZABETH S. MALAND  
City Clerk

By \_\_\_\_\_  
Deputy City Clerk

Approved: \_\_\_\_\_  
(date)

\_\_\_\_\_  
JERRY SANDERS, Mayor

Vetoed: \_\_\_\_\_  
(date)

\_\_\_\_\_  
JERRY SANDERS, Mayor

## STRIKEOUT ORDINANCE

OLD LANGUAGE: ~~Struck-Out~~NEW LANGUAGE: Underlined

(O-2007-40)

Alternative State Mandated Density Bonus Ordinance

ORDINANCE NUMBER O-\_\_\_\_\_ (NEW SERIES)

ADOPTED ON \_\_\_\_\_

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO AMENDING CHAPTER 14, ARTICLE 3, DIVISION 7, SECTIONS 143.0710, 143.0715, 143.0720, 143.0725, 143.0730, 143.0740, AND 143.0750, AND AMENDING CHAPTER 14, ARTICLE 1, DIVISION 3, BY AMENDING SECTION 141.0310(b), ALL RELATING TO THE AFFORDABLE HOUSING DENSITY BONUS REGULATIONS.

**Article 3: Supplemental Housing Development Regulations**  
**Division 7: Affordable Housing Density Bonus Regulations**

**§143.0710 Purpose of Affordable Housing Density Bonus Regulations**

The purpose of these regulations is to provide opportunities for increased residential ~~densities~~ density to developers who guarantee that a portion of their ~~residential housing development~~ will be available to moderate income, low income, very low-income, or senior households. The term housing development as used herein has the same meaning as defined in Section 65915(j) of the California Government Code. The ~~regulations~~ City's Density Bonus Regulations are intended to materially assist the housing industry in providing adequate and affordable ~~shelter~~ housing for all economic segments of the community and to provide a balance of housing opportunities for moderate income, low income, very low-income, and senior households throughout the City. It is intended that the

affordable housing *density* bonus and any additional housing development incentive be available for use in all residential housing developments as provided herein and as allowed by applicable law, and using criteria and standards provided in the Progress Guide and General Plan, as defined by the San Diego Housing Commission; that requests be processed by the City of San Diego, and that they be implemented by the President and Chief Executive Officer of the San Diego Housing Commission. It is also intended that ~~these regulations~~ City's Density Bonus Regulations implement the provisions of California Government Code Sections 65915 through 65918.

**§143.0715 When Affordable Housing Density Bonus Regulations ~~Applies~~ Apply**

- (a) This division applies to any residential ~~housing development of entirely~~ situated on land zoned for five or more pre-density bonus dwelling units where an *applicant* proposes *density* on said land beyond that permitted by the applicable zone in exchange for either of the following as set forth in this division:
  - (a) ~~a~~ A portion of the total *dwelling units* in the housing development being reserved for moderate, low, or very low-income households or for senior citizens ~~or qualified residents~~ through a written agreement with the San Diego Housing Commission; or
  - (b) ~~An applicant proposing development as provided in Section 143.0715(a) shall be entitled to a density bonus as provided in Sections 143.0720 and 143.0730 and may be granted an additional development incentive as provided in Section 143.0740.~~



- (b) The donation of land, as provided herein and pursuant to Government Code Sections 65915 through 65918.

**§143.0720 Affordable Housing Density Bonus Agreement Density Bonus in Exchange for Affordable Housing Units**

- (a) ~~An applicant~~ A housing development may qualify for shall be entitled to a density bonus and incentives as described in this division, for any residential housing development as provided for herein and as allowed by applicable law, for which an written agreement, and a deed of trust securing the agreement, is entered into by the applicant and the President and Chief Executive Officer of the San Diego Housing Commission, as provided in Section 143.0720(b). The written agreement and deed of trust in favor of the San Diego Housing Commission are to be recorded in the Office of the Recorder of the County of San Diego as an encumbrance against the housing development.
- (b) The density bonus units authorized by this division shall be exempt from the Inclusionary Housing Regulations set forth in Chapter 14, Article 2, Division 13.
- (c) ~~The A rental density bonus agreement shall include the following provisions:~~ utilize the following qualifying criteria consistent with the procedures established by the San Diego Housing Commission:
- (1) ~~With respect to rental housing affordable units:~~
- (1) Housing for Senior Citizens - The development consists of housing for senior citizens or qualifying residents as defined under California Civil Code Section 51.3 and 51.12, where at least 35

dwelling units are provided; or a mobilehome park that limits residency based on age requirements for housing for older persons pursuant to California Civil Code Section 798.76 or 799.5.

(2) Affordable housing units -

- (A) Low Income – At least ~~20~~ 10 percent of the pre-density bonus units in the *development* ~~will~~ shall be affordable, including an allowance for utilities, to *low income* households at a rent that does not exceed 30 percent of 60 percent of area median income, as adjusted for assumed household size; or
- (B) Very Low Income - At least ~~10~~ 5 percent of the pre-density bonus units in the *development* ~~will~~ shall be affordable, including an allowance for utilities, to *very low-income* households at a rent that does not exceed 30 percent of 50 percent of the area median income, as adjusted for assumed household size. ~~or~~
- (C) ~~At least 50 percent of the total units will be available to senior citizens or qualifying residents as defined under California Civil Code Section 51.3.~~
- (C) The affordable units shall be designated units, be comparable in bedroom mix and amenities to the market-rate units in the housing development, and be dispersed throughout the housing development.

(3) The *dwelling units* shall remain available and affordable for a period of at least 30 years or longer as may be required by other laws.

(2) (d) ~~With respect to A "for sale" *density* bonus agreement housing affordability shall be determined based on prevailing underwriting standards of mortgage financing available for the *development*, which shall include a forgivable second, silent mortgage, as administered by the Housing Commission. At least 20 percent of the pre-bonus units in the development shall be available to low-income purchasers or 10 percent of the pre-bonus units shall be available to very low-income purchasers or at least 50 percent of the pre-bonus units in the *development* shall be available to senior citizens or qualifying residents as defined under California Civil Code Section. utilize the following qualifying criteria consistent with the procedures established by the San Diego Housing Commission:~~

(1) For-sale *density* bonus shall only be available to common interest *development*, as defined by California Civil Code Section 1351, where at least 10 percent of the pre-*density* bonus units in the *development* shall be initially sold and affordable to moderate income households at a price that is affordable to families earning 110 percent of the area median income as adjusted or assumed household size, as determined by the San Diego Housing Commission, and where all of the *dwelling units* are offered to the public for purchase.

- (3) ~~The affordable units will remain available and affordable as provided in Section 143.0720 for a period of at least 30 years if an additional development incentive is granted to the applicant as provided in Section 143.0740 or 10 years if an additional development incentive is not granted. If an applicant does not request an additional development incentive, the applicant shall submit a pro forma analysis for the Chief Executive Officer of the Housing Commission to document project feasibility.~~
- (2) Prior to, or concurrent with, the sale of each *density* bonus affordable unit, the applicant shall require the buyer to execute and deliver a promissory note in favor of the San Diego Housing Commission so that the repayment of any initial subsidy may be ensured.
- (3) Each for-sale unit shall be occupied by the initial owner at all times until the resale of the unit.
- (4) Upon the first resale of a unit the seller shall comply with all conditions regarding the sale of a unit, as applied by the San Diego Housing Commission, and as set forth in California Government Code Section 65915(c)(2).
- (4) (5) The affordable units shall be designated units which are be comparable in bedroom mix and amenities to the market-rate units in the *development*, and are be dispersed throughout the *development*.

- (e) The *density* bonus units shall have recorded against them a Declaration of Covenants, Conditions and Restrictions in favor of the San Diego Housing Commission that shall enjoy first lien position and shall be secured by a deed of trust that may be recorded against the project or unit, as applicable, prior to construction or permanent financing.
- ~~(5)~~ (f) Provision shall be made by the San Diego Housing Commission for certification of eligible tenants and purchasers, annual certification of property owner compliance, and payment of a monitoring fee, to the San Diego Housing Commission, as adjusted from time to time, for monitoring of affordable unit requirements, and any other terms that the San Diego Housing Commission determines are needed to implement the provisions and intent of this division and State law.

#### **§143.073025 Density Bonus Provisions**

~~A residential *housing development* proposal entirely situated on land zoned for five or more pre-density bonus dwelling units for which an *applicant* is seeking a requesting an affordable housing *density* bonus is subject to the following:~~

- ~~(a) The *development* shall be permitted a *density* bonus of the amount of units requested by the *applicant*, up to a total project dwelling unit count of 125 percent of the units permitted by the *density* regulations of the applicable base zone.~~
- (a) For senior citizen housing meeting the criteria of Section 143.0720(c)(1), the *density* bonus shall be 20 percent.
- (b) For *housing development* that includes affordable housing, pursuant to the Inclusionary Housing Regulations in Chapter 14, Article 2, Division 13,

and that affordable housing is located onsite, that housing development shall be entitled to a density bonus, equal to the number of affordable units provided onsite, up to a maximum of 10 percent of the pre-density bonus units. The increased density shall be in addition to any other increase in density allowed in this division, up to a maximum combined density increase of 35 percent.

(c) For housing development meeting the criteria for low income in Section 143.0720(c)(2)(A), the density bonus shall be calculated as set forth in Table 143-07A. The increased density shall be in addition to any other increase in density allowed in this division, up to a maximum combined density increase of 35 percent. For housing development meeting the same criteria within the Centre City Planned District, the bonus shall apply to the maximum allowable floor area ratio applicable to the housing development consistent with Section 151.0310(e).

(d) For housing development meeting the criteria for very low income in Section 143.0720(c)(2)(B), the density bonus shall be calculated as set forth in Table 143-07B. The increased density shall be in addition to any other increase in density allowed in this division, up to a maximum combined density increase of 35 percent. For housing development meeting the same criteria within the Centre City Planned District, the bonus shall apply to the maximum allowable floor area ratio applicable to the housing development consistent with Section 151.0309(e).

(e) For housing development meeting the criteria for moderate income in Section 143.0720(d), the density bonus shall be calculated as set forth in

Table 143-07C. The increased *density* shall be in addition to any other increase in *density* allowed in this division, up to a maximum combined *density* increase of 35 percent. For *housing development* meeting the same criteria within the Centre City Planned District, the bonus shall apply to the maximum allowable *floor area ratio* applicable to the *development* consistent with Section 151.0309(e).

- (b) ~~Where the applicable zone requires that each lot be occupied by no more than one dwelling unit, the development requires a Site Development Permit. If any deviation from the development regulations of the applicable zone is proposed, is required.~~
- (e) (f) If the *premises* ~~is~~ are located in two or more zones, the number of dwelling units permitted in the *housing development* is the sum of the *dwelling units* permitted in each of the zones. Within the *housing development*, the permitted number of *dwelling units* may be distributed without regard to the zone boundaries.
- (d) (g) Where the *housing development* consists of two or more specifically identified parcels, whether contiguous or noncontiguous, the maximum number of *dwelling units* permitted on each parcel ~~property~~ is calculated based on the area of that parcel. ~~property. Within the development, if any portion of the density is to be transferred between two or more separate parcels, the regulations of Section 143.0750 apply.~~
- (e) (h) Where the *housing development* consists of two or more noncontiguous parcels lying within two or more community planning areas, the *dwelling units* reserved at levels affordable by *moderate income*, *low income* or

*very low income* households shall be distributed among community planning areas in the same proportion as the total number of *dwelling units* constructed within the *housing development*.

**§143.0730 Density Bonus in Exchange for Donation of Land**

An applicant for tentative map, parcel map, or housing development permit, may donate and transfer land to the City for development with affordable housing units, in exchange for a density bonus, in accordance with California Government Code Section 65915, provided the land to be transferred meets all of the following criteria:

- (a) The applicant donates and transfers the land no later than the date of approval of the final subdivision map, parcel map, or residential development application;
- (b) The developable acreage and zoning classification of the land being transferred are sufficient to permit construction of units affordable to very low income households in an amount not less than 10 percent of the number of residential units of the proposed development;
- (c) The transferred land is at least one acre in size or of sufficient size to permit development of at least 40 units;
- (d) The transferred land has the appropriate general plan designation;
- (e) The transferred land is appropriately zoned for development as affordable housing;
- (f) The transferred land is or will be served by adequate public facilities and infrastructure;



- (g) The transferred land has appropriate zoning and development standards to make the development of the affordable units feasible.
- (h) No later than the date of approval of the final subdivision map, parcel map, or of the residential development, the transferred land has all of the permits and approvals, other than building permits, necessary for the development of the very low income housing units on the transferred land, except that the City may subject the proposed development to subsequent design review to the extent authorized by subdivision (i) of Section 65584.3 of the California Government Code if the design is not reviewed by the City prior to the time of transfer;
- (i) The land to be transferred is within the boundary of the proposed development or, if the City agrees, within one-quarter mile of the boundary of the proposed development;
- (j) The transferred land and the affordable units shall be subject to a deed restriction ensuring continued affordability of the units consistent with paragraphs (1) and (2) of subdivision (c) of Section 65915 of the California Government Code, which shall be recorded on the property at the time of dedication; and,
- (k) The land shall be transferred to the City or to a housing developer approved by the City. The City may require the applicant to identify and transfer the land to the developer.

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§143.0740

Additional Housing Development Incentives for Affordable Housing Density Bonus Projects

(a) ~~In accordance with the provisions of Government Code Section 65915, t~~

The City may shall determine whether to grant an development incentive requested by an applicant, to the extent allowed by State law and as set forth in this Section. in addition to the 25 percent density bonus. The additional development incentive may consist of the following:

(a) ~~A density bonus of more than 25 percent;~~

(b) ~~A financial incentive consisting of:~~

(1) ~~Fee reductions or deferrals as authorized for affordable housing in the Municipal Code; or~~

(2) ~~Direct financing assistance from the Housing Commission, Redevelopment Agency, or other public funds, if authorized by the applicable agency on a case-by-case basis, or~~

(c) ~~A deviation from applicable development regulations of the underlying zone pursuant to Section 143.0750.~~

(1) An incentive means any of the following:

(A) A deviation to a development regulation;

(B) Approval of a mixed use development in conjunction with the housing project if the commercial, office, or industrial uses will reduce the cost of the housing development; and if the commercial, office, or industrial uses are compatible with the housing project and the existing or planned

development in the area where the proposed housing project will be located;

(C) Any other regulatory incentive proposed by the applicant, other than a waiver from a required permit, which results in identifiable, financially sufficient, and actual cost reductions.

(2) Pursuant to the California Density Bonus Law, Government Code Section 65915(k), the granting of an incentive shall not be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, or other discretionary approval. Since this provision is declaratory of existing law, the City will process the request for a density bonus and the request for the corresponding incentive(s) through the same mechanism provided as part of any other discretionary approvals required in conjunction with the subject housing development. The City retains full discretion to approve or deny the housing development for reasons unrelated to the density bonus or incentives.

(3) Nothing in this division shall be construed to require the City or any of its related legal entities, including the San Diego Housing Commission, to provide a direct financial incentive, including the provision of land, or the waiver of fees or dedication requirements.

(4) An applicant seeking a density bonus may submit a proposal to the City for specific incentive(s) as identified in 143.0740(b), and may request a meeting with the City, where the housing development meets the

requirements of Sections 143.0720(c) or (d). In order to qualify for incentive(s), the applicant shall sufficiently demonstrate to the satisfaction of the City that the requested incentive(s) result in identifiable, financially sufficient and actual cost reductions. The City shall determine whether to grant any incentives. If the City determines that incentive(s) shall not be granted, the City shall make a written finding based upon substantial evidence, of either of the following:

- (A) The incentive is not required in order to provide for affordable housing costs, as defined in California Health and Safety Code sections 50052.5, or for rents for the targeted units to be set as specified in California Government Code Section 65915(c); or,
- (B) The incentive would have a specific adverse impact, as defined in California Government Code Section 65589.5(d)(2), upon health and safety or the physical environment or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low- and moderate- income households.

- (5) Any housing development eligible for an incentive within the Coastal Overlay Zone and any housing development within the area identified on Map C-380 shall be subject to the regulations of Chapter 13, Article 2, Division 5, Coastal Height Limit Overlay Zone in accordance with the certified Local Coastal Program. Nothing herein shall be construed to

supersede or in any way alter or lessen the effect or application of the California Coastal Act (Division 20 (commencing with Section 30000) of the Public Resources Code.

(b) The following incentives are available consistent with Table 143-07A, Table 143-07B and Table 143-07C:

(1) One incentive for development that includes any of the following:

(A) At least 10 percent of the total units for low income households;

(B) At least 5 percent of the total units for very low income households; or

(C) At least 10 percent of the total units for moderate income households in common interest development.

(2) Two incentives for development that includes any of the following:

(A) At least 20 percent of the total units for low income households;

(B) At least 10 percent of the total unit for very low income households; or

(C) At least 20 percent of the total units for moderate income households in common interest development.

(3) Three incentives for development that includes any of the following:

(A) At least 30 percent of the total units for low income households;

(B) At least 15 percent of the total units for very low income households; or

(C) At least 30 percent of the total units for moderate income households in common interest development.

*Low Income Density Bonus Table 143-07A*

Percent <i>Low Income</i> Units	Percent Density Bonus	Number of Incentives
10	20	1
11	21.5	1
12	23	1
13	24.5	1
14	26	1
15	27.5	1
16	29	1
17	30.5	1
18	32	1
19	33.5	1
20-29	35	2
=30	35	3

*Very Low Income Density Bonus Table 143-07B*

Percent <i>Very Low Income</i> Units	Percent Density Bonus	Number of Incentives
5	20	1
6	22.5	1
7	25	1
8	27.5	1
9	30	1
10	32.5	2
11-14	35	2
= 15	35	3

*Moderate Income Density Bonus Table 143-07C*

Percent <i>Moderate Income</i> Units	Percent Density Bonus	Number of Incentives
10	20	1
11	21	1
12	22	1
13	23	1
14	24	1
15	25	1

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16	26	1
17	27	1
18	28	1
19	29	1
20	30	2
21	31	2
22	32	2
23	33	2
24	34	2
25-29	34	2
= 30	35	3

(c) Child Care Center: *Housing development* that meets the criteria in 143.0720 and includes a child care center as defined in Section 141.0606(a)(2) as part of, or adjacent to, such *development* shall be entitled to an additional density bonus or incentive provided that:

(1) The child care center remains in operation for the greater of 30 years, or the period of time established by Section 143.0720(c)(3):

(2) The percentage of children from *low, very low, or moderate* income households attending the child care center is equal to or greater than the percentage of those same households required in the *housing development*:

(3) The additional density bonus or incentive required is either:

(A) An additional *density* bonus in an amount equal to the amount of square feet in the child care center up to a maximum combined *density* increase of 35 percent; or

(B) An additional incentive that contributes significantly to the economic feasibility of the construction of the child care center;  
and

(4) The City finds, based upon substantial evidence, that the community is inadequately served by child care centers.

(d) Parking: In addition to any other incentive, and upon the request of an *applicant* that proposes a *housing development* meeting the criteria of Sections 143.0720(c) or (d) the City shall apply the following vehicular parking ratio, inclusive of handicapped and guest parking:

(1) Zero to one bedroom: one onsite parking space

(2) Two to three bedrooms: two onsite parking spaces

(3) Four and more bedrooms: two and one-quarter parking spaces

(4) Reductions to the parking ratios shall be granted as follows:

(i) *Housing development* that is at least partially within a *transit area* as described in Chapter 13, Article 2, Division 10 (Transit Area Overlay Zone) or that is subject to Chapter 13, Article 2, Division 11 (Urban Village Overlay Zone), shall receive a 0.25 space per *dwelling unit* reduction in the parking ratio for the entire development.

(ii) *Housing development* that includes dwelling units limited to occupancy by *very low income* households shall receive a 0.25 space reduction in the parking ratio for each *dwelling unit* that is limited to occupancy by a *very low income* household.

(iii) *Housing development* that includes *dwelling units* limited to occupancy by *very low income* households, and is at least partially



within transit area, shall receive a 0.50 space reduction in the parking ratio for each dwelling unit that is limited to occupancy by a very low income household.

(5) For purposes of this division, a housing development may provide onsite parking through tandem parking or uncovered parking, but not through on-street parking or parking within a required front yard setback.

**§143.0750     ~~Deviation to Allow for Additional Development Incentive~~**

~~An applicant may request a deviation from the applicable development regulations as an additional development incentive for affordable housing pursuant to a Site Development Permit decided in accordance with Process Four provided that the findings in Section 126.0504(a) and the supplemental findings in Section 126.0504(1) are made.~~

**§143.0750     Housing Development in the Coastal Overlay Zone**

(a) Housing development within the Coastal Overlay Zone that proposes to use the regulations of this division shall be subject to the applicable certified land use plan and implementing ordinances, including a Coastal Development Permit (Chapter 12, Article 6, Division 7), as described in Chapter 13, Article 2, Division 4.

**§141.0310     Housing for Senior Citizens**

~~Housing for senior citizens~~ Senior Citizens may be permitted with a Conditional Use Permit decided in accordance with Process Three in the zones indicated with a "C" in the Use Regulations Tables in Chapter 13, Article 1 (Base Zones) subject to the following regulations.

- (a) [No change in text.]
- (b) Housing for ~~senior citizens~~ Senior Citizens may be permitted an affordable housing a *density* bonus and an additional development incentive as provided in Chapter 14, Article 3, Division 7 (Affordable Housing *Density* Bonus Regulations). All ~~density~~ bonus units in excess of 25 percent of the allowable *density* of the base zone shall be for occupancy by ~~very low-income~~ Senior Citizens or ~~very low-income~~ qualifying residents at a rent that does not exceed 30 percent of 50 percent of area median income, as adjusted for assumed household size. Proposed ~~developments~~ that provide daily meals in a common cooking and dining facility, and provide and maintain a common transportation service for residents, may be exempt from the affordability requirement of Chapter 14, Article 3, Division 7.
- (c) through (e) [no change].

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02/23/07 Alternative Density Bonus Ordinance  
Or.Dept:DSD  
O-2007-40  
MMS#3273

# **A PUBLIC AGENCY GUIDE TO CALIFORNIA DENSITY BONUS LAW**

**Barbara E. Kautz**

**GOLDFARB & LIPMAN LLP**

*Adapted from Presentation for  
County Counsels' Association of California*

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1300 Clay Street, Ninth Floor  
Oakland, CA 94612  
510 836-6336  
bkautz@goldfarblipman.com

The State's density bonus law (Government Code section 65915 – 65918) was significantly modified in 2004 by SB1818 (effective January 1, 2005). It can be considered a voluntary inclusionary housing ordinance, providing large incentives to developers who include small amounts of affordable housing in their projects. The bill requires cities and counties to grant developers both density bonuses of 20 to 35 percent, depending on the amount and type of affordable housing provided, and "concessions"—exceptions from normally applicable zoning and other development standards. Section 65915 was amended again in 2005 (SB 435, Chapter 496). While SB 435 clarified some issues, what has resulted is poorly drafted and confusing legislation that has raised substantial public concerns while resulting in little additional affordable housing to date, although the jury is still out on the ultimate impact of the bill.

### **A. Background of the Legislation**

The State's density bonus law formerly provided a 25 percent increase in density in exchange for 10 to 20 percent affordable housing. Anecdotal reports indicated that few developers took advantage of the legislation because of the relatively high percentage of affordable housing required to receive a bonus.

In 2004, a coalition of housing advocates and the California Association of Realtors (CAR) achieved the passage of SB1818, which made significant changes in the law. The changes reduced the proportion of affordable units needed to obtain a density bonus, increased the maximum bonus from 25 to 35 percent, required local governments to grant additional concessions, and added a bonus for land donation. Of interest is that the Building Industry Association (BIA), whose membership includes the major developers in the state, did not play a major role in drafting the legislation.

Although the stated purpose of the changes was to increase the amount of affordable housing in the state, the two advocacy groups had additional interests. The issue of greatest concern to nonprofit housing developers was local parking standards, which they considered excessive for affordable housing and which have a significant effect on the economics of an affordable project. CAR's interest may have derived in part from a desire to force local governments to give more incentives when they imposed local inclusionary housing requirements. The December 27, 2004, edition of the California Real Estate Journal stated that:

"In effect, Section 65915 grafts the density bonus and additional incentives onto the local inclusionary zoning requirement. Accordingly, developers that want to build in jurisdictions with local inclusionary zoning should consider taking advantage of the benefits of Section 65915 as a means to mitigate the economic burden imposed by inclusionary zoning."

However, ambiguous language in the bill and competing Assembly and Senate floor analyses for SB 435 make it unclear whether developers of inclusionary housing are in fact entitled to a density bonus!

Regardless of the statute's ambiguity and complexity, all cities and counties must adopt an ordinance specifying how they will comply with the legislation.<sup>1</sup> The law is applicable to charter cities.<sup>2</sup>

## B. Basic Provisions

Density bonuses may be given for affordable housing, senior housing (whether or not affordable), donations of land for affordable housing, condominium conversions that include affordable housing, and child care facilities. In addition to density bonuses, applicants who provide affordable housing qualify for various zoning concessions and for reduced parking standards.

### 1. Projects Eligible for Density Bonuses

Density bonuses are available to five categories of residential projects:

- a. **Affordable Housing.** Housing developments that create at least five dwelling units or unimproved lots<sup>3</sup> are eligible for density bonuses if *either*:
  - **Five percent** of the units are affordable to *very low income* households earning **50 percent of median** or less;<sup>4</sup> *or*
  - **Ten percent** are affordable to *lower income* households earning **80 percent of median** or less;<sup>5</sup> *or*
  - **Ten percent** are affordable to *moderate income* households earning **120 percent of median** or less, but only if the project is a common interest development<sup>6</sup> where *all* of the units, including the moderate-income units, are available for sale to the public.<sup>7</sup>

These required percentages of affordable housing apply only to the project *without* any density bonus, not the entire project. For instance, assume that a 100-unit project is entitled to a 20 percent density bonus, giving a total of 120 units. To qualify for the 20 percent bonus, the project need only provide:

<sup>1</sup> Government Code section 65915(a). All further references are to the Government Code unless otherwise indicated. In addition, all references are to the statute as amended by SB435, Chapter 496, Statutes of 2005 (effective January 1, 2006.)

<sup>2</sup> Section 65918.

<sup>3</sup> Section 65915(g)(5) (which states that the bonuses apply to housing developments consisting of five or more dwelling units); Section 65915(j) (defining "housing development" as including residential units, subdivisions, conversion of commercial buildings to residences, and rehabilitation of apartments that creates additional dwelling units). The definitions are poorly written and could be interpreted to allow a density bonus for an existing affordable development. However, Section 65915(b)(1) states that a bonus is available when an applicable "agrees to construct" a housing development, implying that the bill does not apply to existing developments.

<sup>4</sup> Section 65915(b)(1)(B) (referring to Health & Safety Code § 50105 for definition of very low income households; see also 25 CCR § 6926). Income levels for all categories are adjusted by household size and published annually for each county by the California Department of Housing and Community Development. See 25 CCR § 6932.

<sup>5</sup> Section 65915(b)(1)(A) (referring to Health & Safety Code § 50079.5 for definition of lower income households; see also 25 CCR § 6928).

<sup>6</sup> As defined by Civil Code § 1351.

<sup>7</sup> Section 65915(b)(1)(D) (referring to Health & Safety Code § 50093 for definition of moderate income households; see also 25 CCR § 6930).

- 5 very low income units (5% of 100); *or*
- 10 lower income units (10% of 100).

**Continued Affordability.** To be eligible for a density bonus, the affordable units must be sold or rented at affordable prices or rents and must remain affordable for a specified period.

All **very low income and lower income units** must remain affordable for **30 years** (unless a subsidy program requires a longer period of affordability).<sup>8</sup> Housing costs for very low income units cannot exceed 30 percent of 50 percent of median income. In other words, if median income equals \$80,000 per year, the household's housing expenses theoretically cannot exceed \$12,000 per year ( $30\% \times (50\% \text{ of } \$80,000) = 30\% \times \$40,000 = \$12,000$ ). (Note, however, that the California Housing and Community Development Department (HCD) publishes income limits by household size that may vary significantly from actual calculations of median income.) For lower income units, rents cannot exceed 30 percent of 60 percent of median income, while housing costs in owner-occupied lower income units cannot exceed 30 percent of 70 percent of median income.<sup>9</sup>

**Moderate income ownership units** must initially be sold to moderate income buyers at an affordable price (generally based on housing costs equal to 35 percent of 110 percent of median income).<sup>10</sup> At resale, the local government can either enforce an equity-sharing agreement (involving sale of the home at fair market value and sharing of the profits with the city) or enforce another law regarding affordability.<sup>11</sup> This latter provision probably allows counties and cities to adopt their own laws imposing stricter resale controls on these moderate income units, if desired.

Affordable rents and sales prices for the affordable units must be determined by using the methodology included in the California Code of Regulations.<sup>12</sup> Total housing costs for rentals include rent, utilities, and any fees and service charges levied by the landlord. Total housing costs for ownership units must include principal, interest, property taxes, insurance, private mortgage insurance (if any), utilities, homeowners' association fees, and an allowance for maintenance costs. These formulas tend to result in lower sales prices than would be typical in the private market. In other words, banks would generally be willing to loan more money to these buyers than is the case when the statutory formulas are used.

- b. Senior Housing.** A senior citizen housing development as defined by Civil Code sections 51.3 and 51.12<sup>13</sup> is eligible for a density bonus even if none of the units are affordable. Senior housing projects eligible under Civil Code section 51.3 must contain at least 35 units.<sup>14</sup>

<sup>8</sup> Section 65915(c)(1).

<sup>9</sup> Section 65915(c)(1) (referring to Health & Safety Code sections 50053 & 50052.5). Agencies should use HCD's published income charts for each County to determine applicable very low, low, and moderate-income limits. These are available on HCD's web site.

<sup>10</sup> Section 65915(c)(2) (referring to Health & Safety Code sections 50093 & 50052.5).

<sup>11</sup> Section 65915(c)(2).

<sup>12</sup> 25 CCR §§ 6910, 6918 & 6920.

<sup>13</sup> This code section is applicable only to Riverside County.

<sup>14</sup> Civil Code § 51.3(b)(4).

- c. **Donations of Land.** A land donation can qualify a project for a density bonus if the parcel donated is large enough to accommodate at least 10 percent of the market-rate units at densities suitable for very low income housing.<sup>15</sup> In other words, a 500-unit market-rate project can receive a density bonus by donating land zoned at densities that can accommodate, and are suitable for, a 50-unit very low income project.

Land donations must meet strict criteria. In particular, the donated land must satisfy all of the following requirements:<sup>16</sup>

- Have the appropriate general plan designation, zoning, and development standards to permit the feasible development of units affordable to very low income households in an amount equal to at least 10 percent of the units in the residential development;
- At least one acre in size or large enough to permit development of at least 40 units;
- Served by adequate public facilities and infrastructure;
- Located within the boundary of the residential development or within one-fourth mile of it (if approved by the local agency);
- Have all necessary approvals except building permits needed to develop the very low income housing, unless the local government chooses to permit design review approval at a later date;
- Subject to a deed restriction to ensure continued affordability;
- Transferred to either a local agency or housing developer identified by the local agency, or by the developer.

These criteria in effect make land donation an option only for larger projects which can donate sites of at least one acre. This option can be quite favorable for large developers, however, because a site large enough to accommodate 10 percent very low income units will normally include much less than 10 percent of the project's land area. That is because very low income projects are usually built at densities of at least 20 units/acre, greater than the density of most market-rate projects in "greenfield" areas. If a county or city is willing to allow higher densities, this can be an effective way to create significant affordable housing.

- d. **Condominium Conversions.** A condominium conversion is eligible for a density bonus if either 33 percent of units are affordable to *moderate-income* households or 15 percent are affordable to *lower income* households.<sup>17</sup> Since condominium conversions by definition apply to existing structures, presumably this would apply only in the rare instances when additional units may be added on the site either by subdividing existing units or by adding units on site. This code section was not changed by the 2004 or 2005 legislation.

<sup>15</sup> Section 65915(h).

<sup>16</sup> Section 65915(g)(2)(A – F).

<sup>17</sup> Section 65915.5(a) (referring to Health & Safety Code section 50093 for definition of moderate income households and to Health & Safety Code section 50079.5 for definition of lower income households).

- e. **Child Care Facilities.** A housing development is eligible for an *additional* bonus if it includes a child care facility *and* either qualifies as a senior citizens housing development or includes enough affordable housing to be eligible for a density bonus.<sup>18</sup> The statute requires counties and cities to place strict operating requirements on the child care facilities. The child care centers must:

- Remain in operation for the period of time that affordable units must remain affordable (30 years in the case of very low income and lower income households); and
- Ensure that the children attending the facility come from households with the same proportion of very low, lower, or moderate incomes as qualified the project for the density bonus.<sup>19</sup> In other words, if the housing development qualified for a density bonus because 10 percent of the units were affordable to moderate-income households, then 10 percent of the children at the child care center must come from moderate-income households.

These conditions are in a practical sense virtually impossible to enforce over time, although they must be imposed as conditions of approval.

Like the section on condominium conversions, this code section was not amended by the 2004 or 2005 legislation.

## 2. Density Bonuses Available

- a. **Affordable Housing.** The 2004 statute modified density bonus law to give higher bonuses for lower income housing and lower bonuses for moderate-income housing. Housing developments are eligible for a **20 percent density bonus** if they contain:

- **Five percent** of units affordable to **very low income households**;<sup>20</sup> or
- **Ten percent** of units affordable to **lower income households**.<sup>21</sup>

Housing developments qualify for only a **5 percent density bonus** if **ten percent** of the units are affordable to **moderate-income families**.<sup>22</sup>

In addition, there is a sliding scale that requires:

- An additional **2.5% density bonus** for each additional increase of 1% very low income units;<sup>23</sup>
- An additional **1.5% density bonus** for each additional 1% increase in lower income units;<sup>24</sup> and

<sup>18</sup> Section 65915(i). Section 65917.5 also allows a city or county to provide a density bonus for a commercial or industrial project that includes a child care facility.

<sup>19</sup> Section 65915(i)(2).

<sup>20</sup> Section 65915(g)(1).

<sup>21</sup> Section 65915(g)(2).

<sup>22</sup> Section 65915(g)(4).

<sup>23</sup> Section 65915(g)(1).

<sup>24</sup> Section 65915(g)(2).



- An additional **1% density bonus** for each 1% increase in moderate income units.<sup>25</sup>

No total density bonus can be greater than **35 percent**. The maximum density bonus is reached when a project provides *either* 11 percent very low income units, 20 percent lower income units, or 40 percent moderate income units. The table on page 10 shows these calculations.<sup>26</sup>

A change made by SB435 (effective January 1, 2006) clarified that a developer must choose a density bonus from **only one affordability category** and cannot combine categories.<sup>27</sup> Thus a project that includes, say, 10 percent moderate-income units and 10 percent lower income units must choose the bonus from *either* the moderate-income category or the lower income category. Since the project would be entitled to a 20 percent bonus based on the lower income units, but only a 5 percent bonus based on the moderate-income units, the developer would presumably select the density bonus based on the lower income category and would get no additional bonus for the moderate-income units provided. The effect is to encourage developers to concentrate units in either the lower or very low income categories.

- b. **Senior Housing.** A project qualifying as a **senior citizen housing development** is entitled to a **20 percent density bonus**.<sup>28</sup> The bonus *cannot* be combined with the bonuses granted for affordable housing.<sup>29</sup>
- c. **Donations of Land.** *Additional* density, which may be combined with the density bonuses given for affordable and senior housing, is available for projects that donate land for very low income housing. However, in no case can the total bonus granted exceed 35 percent.<sup>30</sup>

A **density bonus of 15 percent** is available for a land donation that can accommodate **10 percent of the market-rate units** in the development. An additional **1% density bonus** is available for each **1% increase** in the number of units that can be accommodated on the donated land, up to a maximum of 35 percent.<sup>31</sup>

- d. **Condominium Conversions.** A condominium conversion is entitled to a flat density bonus of 25 percent when it includes either 33 percent moderate-income units or 15 percent lower income units.<sup>32</sup> Here, however, the local agency can instead choose to provide an alternative incentive of "equivalent financial value" if it does not choose to grant the density bonus.<sup>33</sup> Note that a conversion is ineligible for a bonus if the apartments to be converted received a density bonus when they were originally built.<sup>34</sup>

<sup>25</sup> Section 65915(g)(4).

<sup>26</sup> SB 435 amended the bill to include tables for each category showing the specific bonus granted for varying percentages of affordability.

<sup>27</sup> Section 65915(b)(2).

<sup>28</sup> Section 65915(g)(3).

<sup>29</sup> Section 65915(b)(2).

<sup>30</sup> Section 65915(h)(2).

<sup>31</sup> Section 65915(h)(1).

<sup>32</sup> Section 65915.5(a) & (b).

<sup>33</sup> Section 65915.5(a).

<sup>34</sup> Section 65915.5(f).

- e. **Child Care Facilities.** A child care facility meeting the operational requirements of the statute and constructed in association with an affordable or senior project is entitled to either an *additional* density bonus equal to the amount of square footage in the child care center; or an alternative incentive that "contributes significantly to the economic feasibility" of the center.<sup>35</sup> Since a "density bonus" is usually interpreted to refer to the number of dwelling units permitted on a site, it is unclear how this requirement for additional *square feet* relates to the otherwise permissible residential density.

The table on the next page summarizes the available density bonuses.

f. **Calculating the Density Bonus.**

• **Bonus Over Zoning Maximum or General Plan Maximum?**

The authors of SB 1818 appear to have intended to clarify that any bonus is to be calculated over the maximum density otherwise allowable by the *zoning ordinance*. Section 65915(o)(2) defines "maximum allowable residential density" as that allowed under the *zoning ordinance*, or the maximum allowable under the *zoning* when a range of density is specified.

However, section 65915(g) states that a density bonus is an increase over the "maximum allowable residential density" under the zoning ordinance *and* the land use element of the general plan, and section 65915(h)(1) relating to land donations repeats this language.

Local agencies can attempt to clarify this by stating in their local ordinances that the density bonus is to be calculated over the zoning maximum. This becomes an issue only where the zoning ordinance permits a lower maximum density than permitted by the community's land use element. Since this situation by itself could raise issues of consistency between the general plan and zoning ordinance,<sup>36</sup> especially if the community utilized the maximum densities in the land use element to obtain approval of its housing element,<sup>37</sup> it is probably better practice in any case to have the same maximum densities in the zoning ordinance and in the land use element.

• **What If There's NO Maximum Density?**

A few communities do not place *any* limit on the number of dwelling units that can be constructed on a site, but instead allow as many units as can be constructed given limitations on height, setbacks, floor area, and other zoning regulations. Do these communities also need to grant density bonuses?

Since density bonuses allow developers additional *units*, it appears that an agency would not need to grant density bonuses if there is no limit on the number of units to begin with. However, at least one city attorney believes that the agency must calculate the reasonable maximum density otherwise allowable under the city's regulations and then allow additional units over that density. This calculation, however, involves numerous assumptions regarding the size and type of the units to be built.

<sup>35</sup> Section 65915(i)(1).

<sup>36</sup> Section 65860(a).

<sup>37</sup> Section 65863(b).

The child care provision defines additional square footage as a *density* bonus.<sup>38</sup> Consequently, another interpretation might be that the agency is required to allow a percentage increase in square footage.

Our own view is that no density bonuses need be given where there are no limits on density.

Affordable Units or Category	Minimum % Units in Category	Bonus Granted	Additional Bonus for Each 1% Increase in Units in Category	% Units in Category Required for Maximum 35% Bonus
<b>Note:</b> A density bonus may be selected from only one category, except that bonuses for land donation may be combined with others, up to a maximum of 35%, and an additional sq. ft. bonus may be granted for a day care center.				
Very-low income	5%	20%	2.5%	11%
Lower-income	10%	20%	1.5%	20%
Moderate-income (ownership units only)	10%	5%	1%	40%
Senior housing type 1 (35 units or more; no affordable units required)	100% senior	20%	--	--
Land donation for very-low income housing	10% of market-rate units	15%	1%	30%
Condominium conversion – moderate-income	33%	25%(a)	--	--
Condominium conversion – lower-income	15%	25%(a)	--	--
Day care center	--	Sq. ft. in day care center (a)	--	--
<b>Notes:</b> (a) Or an incentive of equal value, at the City's option.				

### • Rounding Up

Any density bonus calculation resulting in a fraction entitles the developer to another bonus unit.<sup>39</sup> For instance, a project with 102 units, 10 percent of which are affordable to

<sup>38</sup> Section 65915(i)(1)(A).

<sup>39</sup> Section 65915(g)(5).

lower income households, is entitled to 21 bonus units ( $20\% \times 102 = 20.4$ , or 21 bonus units). Of course, local agencies can play this game as well by requiring in their local ordinances that the number of affordable units to be provided must also be rounded up. Thus, in a 102-unit project, a developer would need to provide 11 units to meet the 10 percent requirement ( $10\% \times 102 = 10.2$ , or 11 affordable units if all percentages are to be rounded up).

### 3. Concessions, Incentives, Waivers, Reductions, and Reduced Parking Requirements

Of greatest concern to local planners are the requirements in the statute that give applicants the right to modifications in local development standards: zoning, subdivision controls, and design review requirements. The planners' parade of horrors includes poorly designed multifamily housing with inadequate parking forced upon counties and cities by developers who take full advantage of the statute, defeating years of effort by housing advocates and local governments to overcome opposition to multifamily and affordable housing by ensuring that it is well-designed. Unfortunately, if faced with a poorly designed project proposed under density bonus law, agencies are forced to take various procedural maneuvers to ensure that projects are of high quality.

To date few developers have applied for a density bonus or any significant concessions. The bill's proponents argue that most applicants do not want to have protracted disagreements with cities and counties, and their requests will be reasonable.

Applicants can have standards relaxed in three ways: by requesting "concessions and incentives;" by asking for "waivers and reductions;" and by using reduced parking standards contained in the statute.

a. **Concessions and Incentives.** An applicant who 1) applies for a density bonus<sup>40</sup> and 2) bases the request on the provision of affordable housing may also apply for one to three "concessions or incentives." "Concessions and incentives" are defined as:

- **Reductions in site development standards and modifications of zoning and architectural design requirements**, including reduced setbacks and parking standards, that result in "identifiable, financially sufficient, and actual cost reductions."<sup>41</sup>
- **Mixed used zoning** that will reduce the cost of the housing, if the non-residential uses are compatible with the housing development and other development in the area.<sup>42</sup>

<sup>40</sup> Some applicants have argued that they may apply for an incentive or concession without first applying for a density bonus. However, Section 65915(a) states that, "*When an applicant seeks a density bonus...* [the relevant] local government shall provide the applicant incentives or concessions ...;" and Section 65915(d)(1) similarly states, "*An applicant for a density bonus...* may submit to a city, county or city and county a request for the specific incentives or concessions..." (emphasis added). On the other hand, the statute allows the applicant to propose a lesser density bonus than the maximum permitted by the statute (Section 65915(g)), so an application for just one bonus unit would entitle the applicant to the incentives and concessions.

<sup>41</sup> Section 65915(f)(1).

<sup>42</sup> Section 65915(f)(2).

- **Other regulatory incentives or concessions** that result in "identifiable, financially sufficient, and actual cost reductions."<sup>43</sup>

One to three incentives or concessions may be requested on a sliding scale, depending on the amount of affordable housing provided, as shown in the table below.<sup>44</sup>

The developer has the right to select the incentives, although a city or county may of course encourage the developer to select other incentives on a voluntary basis. However, to deny the specific incentives proposed, the agency must either find that they do not meet the threshold requirements set in the statute—in particular, that they do not result in "identifiable, financially sufficient, and actual cost reductions"—or make the findings required to deny a request for an incentive, discussed below.

Target Units or Category	% of Target Units		
Pursuant to State Density Bonus			
Very-low income	5%	10%	15%
Lower-income	10%	20%	30%
Moderate-income (ownership units only)	10%	20%	30%
Condominium conversion – 33% moderate-income	(d)		
Condominium conversion – 25% lower-income	(d)		
Day care center	(d)		
<b>Maximum Incentive(s)/Concession(s)</b> (a)(b)(c)	<b>1</b>	<b>2</b>	<b>3</b>
<b>Notes:</b> (a) A concession or incentive may be requested only if an application is also made for a density bonus. (b) Concessions or incentives may be selected from only one category (very-low, lower, or moderate). (c) No concessions or incentives are available for land donation or market-rate senior housing. (d) Condominium conversions and day care centers may have one concession or a density bonus at the City's option, but not both.			

- b. **"Waivers and Modifications" of "Development Standards."** Localities may not enforce any "development standard" that would preclude the construction of a project with the density bonus and the incentives or concessions the developer is entitled to.<sup>45</sup> In addition to requesting "incentives and concessions," applicants may request the waiver of an unlimited number of "development standards" by showing that waiver is needed to make the project economically feasible.<sup>46</sup> Waivers and modifications are not limited to

<sup>43</sup> Section 65915(f)(3).

<sup>44</sup> Based on Section 65915(d)(2).

<sup>45</sup> Section 65915(e).

<sup>46</sup> Section 65915(f).

projects containing affordable housing and may be requested by any applicant requesting a density bonus, including bonuses for senior housing, condominium conversions, and child care centers.

In yet another example of inartful drafting, the statute defines "development standards" as "site or construction conditions that apply to a residential development pursuant to any ordinance, general plan element, specific plan, charter amendment, or other local condition, law, policy, resolution, or regulation."<sup>47</sup> Since this is different from the definition of "incentive or concession," and does not specifically include zoning or architectural design, some attorneys have argued that it has a more limited meaning related to "construction," such as drainage, grading, soils engineering, and utilities, but not including zoning regulations regarding height, setbacks, etc. However, this view is not supported by the statute's requirement that cities and counties establish procedures for waivers and reductions which "*shall include . . . such items as minimum lot size, side yard setbacks, and placement of public works improvements.*"<sup>48</sup> "Site and construction conditions" *do* seem to be confined to conditions affecting the *physical* location or type of construction and do not include use restrictions, procedural requirements, affordable housing requirements, and impact fees.

This is an area where local agencies may wish to resolve the ambiguity by providing a better definition of "development standards" in their local ordinances.

- c. **Parking Standards.** If a project qualifies for a density bonus because it is a senior project or provides affordable housing, a city or county, at the request of the developer, must reduce the required parking for the entire project—including the market-rate units—to the following:

- zero to one bedroom – one on-site parking space
- two to three bedrooms – two on-site parking spaces
- four or more bedrooms – two and one-half on-site parking spaces.<sup>49</sup>

These numbers include guest parking and handicapped parking. The spaces may in tandem or uncovered, but cannot be on-street. The standards are uniform throughout the state, with no ability to vary them for local conditions. Unlike incentives or concession, *the parking standards may be requested even if no density bonus is requested.*

Some communities have defined a request for reduced parking (assuming that these standards are lower than those normally required) as a concession.

#### 4. Local Agency Discretion

Can counties and cities deny requests for density bonuses, incentives, concessions, waivers, reductions, and reduced parking? Only with difficulty: either by making specified findings, supported by substantial evidence; or, by finding that the request does not meet the threshold requirements laid out in the statute.

<sup>47</sup> Section 65915(o)(1).

<sup>48</sup> Section 65915(d)(3) (emphasis added)

<sup>49</sup> Section 65915(p).

a. **Threshold Requirements.** Projects do not qualify for a density bonus—and hence the local agency may disapprove a request—if they do not meet the standards set in the statute. Local agencies can require that applicants show that they have met these threshold requirements. Some of the most important are these:

- **For affordable housing:** Initial sales prices and rents must meet the requirements of the California Code of Regulations. The applicant may be asked to provide (or reimburse the local agency's costs to provide) appropriate deed restrictions to ensure affordability.
- **For land donations:** The project must comply with the long list of conditions included in Section 65915(h)(2).
- **For incentives and concessions:** The regulatory concessions requested must result in "identifiable, financially sufficient, and actual cost reductions."<sup>50</sup> Local agencies can encourage applicants to apply for certain concessions and incentives by making a finding in their ordinances that certain concessions do result in actual cost reductions, and the homebuilder need not provide his or her own economic analysis.
- **For waivers and reductions:** The applicant must show that the development standard being waived will preclude the construction of the project with the density bonus, incentives and concessions requested,<sup>51</sup> and that the waiver is needed to make the housing units economically feasible.<sup>52</sup>

Because projects are eligible for a density bonus, incentives, and waivers only if they meet the threshold requirements contained in the statute, local agencies should be able to deny these requests if the application fails to meet these requirements.

b. **Findings for Disapproval.** In three places the statute lists findings required to deny incentives, concessions, waivers, and reductions. The findings are similar in all three cases but have slight variations. However, *no findings* are listed that may be used to deny a density bonus or a requested reduction in parking requirements; the language in the statute appears to preempt local authority to deny these requests.<sup>53</sup>

The findings are included in the table on the following page.

c. **Attorneys Fees.** An applicant is entitled to attorneys' fees and costs if a city or county denies a request for a density bonus, incentive, concession, waiver, or reduction in violation of either Section 65915(d)(3) or 65915(e).

<sup>50</sup> Sections 65915(h)(1) & (3).

<sup>51</sup> Section 65915(e).

<sup>52</sup> Section 65915(f).

<sup>53</sup> "Upon the request of the developer, no city, county, or city and county shall require a vehicular parking ratio . . . that exceeds the following ratios . . ." Section 65915(p)(1).

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Code Section	Applicable To:	Procedural Requirements	Finding
65915(d)(1)	Incentives & concessions	In writing, based on substantial evidence	(A) The concession or incentive is not required in order to provide for affordable housing costs, as defined in Section 50052.5 of the Health and Safety Code, or for rents for the targeted units to be set as specified in subdivision (c); or (B) The concession or incentive would have a specific adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5,* upon public health and safety or the physical environment or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low- and moderate-income households.
65915 (d)(3)	Incentives and concessions	Agency must adopt procedures for complying with section	1. Nothing in this subdivision shall be interpreted to require a local government to grant an incentive or concession that has a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5,* upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact. 2. Nothing in this subdivision shall be interpreted to require a local government to grant an incentive or concession that would have an adverse impact on any real property that is listed in the California Register of Historical Resources.
65915(e)	Waivers and modifications	Agency must adopt procedures for granting waivers**	1. Nothing in this subdivision shall be interpreted to require a local government to waive or reduce development standards if the waiver or reduction would have a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5,* upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact. 2. Nothing in this subdivision shall be interpreted to require a local government to waive or reduce development standards that would have an adverse impact on any real property that is listed in the California Register of Historical Resources.
<p>*Paragraph (2) of subdivision (d) of Section 65589.5 states: "[A] 'specific, adverse impact' means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete."</p> <p>**This requirement is in section 65915(d)(3).</p>			



## C. Issues

### 1. Relationship to Local General and Specific Plans

The density bonus law is, at its heart, profoundly anti-planning. It assumes that every parcel in the state can accommodate a density 35 percent higher than its existing zoning—no matter how high the permitted density or the capacity of the local infrastructure. By allowing unlimited waivers to accommodate density bonuses, the law assumes that achieving maximum density is more important than any other local planning requirement. But the state Department of Housing and Community Development (HCD) gives no credit to communities that encourage density bonuses. In calculating zoning capacity (the number of dwellings that can be built given present zoning), HCD does not allow communities to increase their capacity based on developers' ability to obtain a density bonus.

The statute provides specifically that the granting of a density bonus, concession, or incentive by itself shall not require a general plan amendment, zoning change, local coastal plan amendment, *or any other discretionary approval*.<sup>54</sup> Consequently, counties cannot establish a "density bonus permit" or other special permit for projects that request density bonuses, even when they violate the general plan and zoning. Rather, the density bonus and any request for concessions should be heard as part of any other discretionary approval needed.

There is no similar statutory language prohibiting discretionary approvals when applicants request waivers, reductions, and reduced parking. In fact, section 65915(d)(3) mandates that communities establish procedures for dealing with waiver requests. While most communities treat these like other density bonus requests, it may be possible to set up a separate discretionary process for these particular requests.<sup>55</sup>

### 2. Relationship to Local Inclusionary Requirements

The density bonus law applies when an applicant "seeks a density bonus" and "seeks and agrees to construct" the required percentages of affordable units. Does this mean that bonuses are available only when the developer *voluntarily* agrees to construct affordable units, or are they available whenever the developer builds affordable units, even if those affordable units were built because a local inclusionary housing ordinance *requires* their construction?

The legislative history for the recently adopted SB 435 provides diametrically opposed interpretations of this issue. Earlier versions of the bill amended Section 65915 to clarify that density bonuses would be available whenever projects included affordable housing meeting the thresholds in the bill. This language was removed by the Assembly Housing and Community Development Committee, and the original language was restored. The final floor analysis in the Assembly read as follows:

[T]he language added on June 21, 2005, which states that a local government must provide a density bonus only when an applicant "seeks and agrees to construct" was

<sup>54</sup> Sections 65915(g)(5) & 65915(k).

<sup>55</sup> But if reduced parking is defined as an incentive or concession in the local ordinance, then the community should treat it like any other incentive or concession and not require a separate discretionary approval.

intended to clarify that these density bonus provisions only apply when either: 1) a local government does not have an inclusionary housing ordinance or 2) an applicant proposes to include affordable units over and above those required by a locally adopted inclusionary ordinance. That amendment was adopted by the Assembly Housing Committee to clarify that issue.

However, when the identical bill was returned to the Senate, the Senate Floor analysis read as follows:

This language means that any affordable units in a development count toward meeting density bonus requirements, regardless of whether or not the affordable units are required to be constructed by the local government pursuant to an ordinance.

What does this mean for localities? There is a basis for both interpretations. We have not yet found a case interpreting a statute where the two houses of the Legislature completely differed on its meaning.

a. **Applying Inclusionary Requirements to Bonus Units.** It is also not clear whether local inclusionary requirements can be imposed on bonus units themselves. Clearly the Legislature intended to give developers market-rate units in exchange for affordable units; the number of affordable units required is based on the project size *without* the bonus units.<sup>56</sup> For instance, assume that a 100-unit project becomes a 120-unit project after receiving a 20% density bonus because it includes 10% lower income units. Only 10 units (10% of 100) need to be affordable to lower income households, not 12 units (10% of 120).

If a county or city chooses to allow a density bonus for inclusionary units, then the overall percentage of affordable units will decline. For instance, with a 10% inclusionary requirement, normally the local agency would require 12 inclusionary units in a 120-unit project (10% of 120 units). However, if 20 units are density bonus units, none of which are affordable, then only 8.4% (10/120) of the total units will be affordable inclusionary units, rather than 10% (12/120) as intended by the inclusionary ordinance.

b. **Avoiding the Application of the Costa-Hawkins Act by Granting Density Bonuses.** The Costa-Hawkins Act (Civil Code §1954.51 *et seq.*) regulates local rent control. It gives the owner of any rental unit the right to set both the initial rent and the rent when a tenant vacates the unit ("vacancy decontrol"). At least two Southern California cities (Santa Monica and the City of Los Angeles) have been sued on the basis that their inclusionary ordinances, when applied to rental housing, violated the Costa-Hawkins Act.<sup>57</sup>

However, language in Costa-Hawkins states that its provisions do not apply when the owner of rental apartments has agreed by contract with a public agency to control rents in consideration for "a direct financial contribution or any other form of assistance specified in [Section 65915]."<sup>58</sup> Inclusionary rental units should be exempt from Costa-Hawkins when the project

<sup>56</sup> Section 65915(g)(5).

<sup>57</sup> Both cases were settled, resulting in no published decision. While the Costa-Hawkins statute was clearly intended to preempt local rent control laws, there is little evidence that it was intended to put an end to inclusionary programs for rental housing, which were common when the Costa-Hawkins act was adopted in 1995. Unfortunately, efforts to amend the law to clearly exempt inclusionary programs have been unsuccessful. See detailed discussion in Nadia I. El Mallakh, Comment, *Does the Costa-Hawkins Act Prohibit Local Inclusionary Zoning Programs?* 89 Cal. L.Rev. 1847 (2001).

<sup>58</sup> See Civil Code section 1954.52(b).

includes: (1) a contract with the local agency; and (2) any of the incentives listed in the density bonus law.

Consequently, giving density bonuses and the other development concessions for rental inclusionary units can avoid this problem. In addition, since the forms of assistance specified by Section 65915 are very broad, it is likely that most projects that include rental inclusionary units have received one of these incentives. Most inclusionary ordinances require developers to enter into a recorded agreement. To avoid the application of Costa-Hawkins, the agreement should recite that the developer has agreed to control rents in exchange for the incentives granted by the locality.

c. **Relationship to Redevelopment Inclusionary Requirements.** Redevelopment law requires that every ten years, 15 percent of *all* newly built and substantially rehabilitated units in a redevelopment project area must be affordable to low and moderate income households.<sup>59</sup> Of the 15 percent, 6 percent must be affordable to very low income households, and 9 percent to moderate-income households. Some communities meet these production requirements by ensuring that every residential project in the redevelopment area contains the required 15 percent affordable housing.

However, a difficulty can arise if the community grants a density bonus in exchange for these redevelopment inclusionary units. A project with 6 percent very low income units qualifies for a 22.5% density bonus. A 100-unit project with 15 affordable units, for example, would receive an additional 23 market-rate units. However, if the inclusionary requirements were not applied to the 23 bonus units, only 12.2% (15/123) of the now 123-unit project would be affordable, leaving the project area 4 units short in meeting its production requirements.

What to do? Besides deciding to live with the shortfall, agencies could adopt several strategies:

- Require that all projects in the redevelopment area meet the redevelopment affordable housing production requirements (15% total; 6% very low, 9% moderate), regardless of whether a density bonus is granted, on the theory that this is the best means to reconcile conflicting state goals. (One weakness of this theory is that redevelopment law does not require *each* development to meet the affordability requirements, only the project area as a whole.)
- Do not allow inclusionary units provided to comply with redevelopment law to qualify a project for a density bonus (relying on the Assembly's interpretation of the bill).
- Require a higher percentage of inclusionary units when density bonuses are requested in redevelopment areas. For instance, a project with 7.5% very low income units and 11.25% moderate income units would qualify for a 25 percent bonus but overall would meet the 6% low and 9% moderate requirement.

### 3. Relationship to Local Coastal Plans

The statute provides that it shall not be construed to supersede or in any way alter the effect of the California Coastal Act.<sup>60</sup> However, it also provides that density bonuses, incentives, and concessions do not, in and of themselves, require an amendment to a local coastal plan.<sup>61</sup>

<sup>59</sup> Health & Safety Code section 33413(b)(2).

<sup>60</sup> Section 65915(m).

Coastal communities have reported, with some puzzlement, that the Coastal Commission staff has refused to approve local density bonus ordinances applicable within the coastal zone. We're not yet aware of the rationale, although it may relate to the reduction of the overall percentage of affordable housing in the coastal zone if bonus units do not need to be affordable.

#### 4. Application of CEQA to Density Bonus Projects

Section 65915 does not establish an exemption from CEQA requirements. The regulatory concessions that must be offered to a qualifying project cannot include non-compliance with CEQA. CEQA is not limited by the statute.

Because density bonus projects will exceed general plan and zoning densities and may include reduced development standards, they may not be within the scope of program EIRs and similar EIRs prepared for general plans, specific plans, and zoning ordinances. Hence citizens may be able to make a "fair argument" either that the project itself was not adequately covered by the earlier EIR; or that the cumulative impacts of projects with densities higher than those reviewed in the general plan have not been adequately addressed. Similarly, an argument may be made that reduced parking may have significant effects because residents will park on-street. In general, because they are more likely to be inconsistent with general plans, an argument may be made more easily that density bonus projects need an EIR.

A local agency may deny a proposed incentive, concession, or waiver when there is substantial evidence that it would have a "specific adverse impact" on "public health and safety" or the physical environment, as defined in Section 65589.5(d)(2), or on a property listed on the California Register of Historical Resources, and there is "no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low- and moderate-income households." An EIR would likely provide the basis for such findings. The agency could deny a proposed incentive, concession, or waiver if an EIR identified: 1) significant project impacts 2) based on objective written standards 3) that either cannot be avoided or 4) that could be mitigated, but the mitigation would make the project unaffordable.

#### D. Density Bonus Requirements in the Context of a Land Use Regulatory Scheme

Density bonus law is not part of a city or county's normal land use regulatory scheme. It is based on the assumption that the density and development standards of every community are too strict and should be modified when a small amount of affordable housing is created. The law is profoundly opposed to local planning. In an example of unintended consequences, some communities have already found that the law has resulted in:

- **Increased resistance to upzonings and high densities**, since residents fear that a 35 percent density bonus will be added to the approved high densities.

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<sup>61</sup> Sections 65915(g)(5) & 65915(k).

- **Increased resistance to inclusionary zoning**, since a density bonus may need to be granted when affordable housing is built. Some communities have set their inclusionary requirements to avoid the need for a density bonus (e.g., 3% very low income and 9% moderate-income).
- Concern that affordable projects will be built with **insufficient parking and poor design**, marking a return to the bad old days when poorly designed affordable housing created massive public resistance to new affordable developments.

There are some strategies that localities can use in drafting their own density bonus ordinances to enable local plans to be implemented to the extent possible. To date, the majority of communities appear to have chosen to do nothing because of the complexity of the law and the time-consuming drafting process. A local ordinance, however, can avoid staff panic when faced with the first application, can better protect the agency from legal challenge, and can better support local plans and zoning. Some provisions to include are these:

- **Application requirements.** Require detailed information to ensure that the project complies with the threshold requirements discussed earlier. These may include, for instance, calculations of affordability, evidence that incentives and concessions provide "identifiable, financially sufficient, and actual cost reductions," and economic analyses to show that any waivers are required to make the project economically feasible.
- **Enforceable written agreements.** Require that the affordability requirements be enforced through a recorded written agreement. Some communities also require the developer to provide the documents to be recorded that will enforce the obligation, or to pay for ongoing public agency monitoring of affordability or public agency preparation of the documents. Some agencies also will not subordinate these agreements to a first mortgage; there is no requirement that the agency do so, although this will make financing more expensive and more difficult to obtain (Fannie Mae and FHA will not purchase loans subject to an affordability restriction).
- **Findings required for approval and denial.** Include as findings in the ordinance the threshold criteria needed for project approval (such as the need for incentives to result in "identifiable, financially sufficient, and actual cost reductions") and, for those projects that meet the threshold criteria, the statutory findings that could justify denial. This will help guide decision-makers' deliberations to those aspects of the project that justify approval or denial of the bonus, incentives, or waivers.

Note that the city or county retains full discretion to approve or deny the project for reasons unrelated to the density bonuses, incentives, or concessions.

- **Encouraging certain incentives and concessions.** Although the developer, rather than the public agency, has the right to choose the incentive or concession, some ordinances attempt to encourage certain favored incentives by requiring less information from the developer when the favored incentives are proposed.
- **Limitations on certain incentives.** If the local zoning ordinance already grants incentives for affordable projects, ensure that these incentives do not automatically apply to a density bonus project. This will prevent the project from requesting incentives *in addition to* those that the project is already entitled to, but will allow the public agency to grant the normal incentives pursuant to density bonus law.

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- **Counting the reduced parking standards as an incentive or concession.** List a request for reduced parking standards conforming to Section 65915(p) as a concession if these parking standards are lower than normally required by the zoning ordinance. The statute is silent and somewhat unclear on this issue.<sup>62</sup>
- **Clarifying the relationship to local inclusionary ordinances.** For cities and counties with an inclusionary ordinance, adopting a density bonus ordinance allows the community to decide whether inclusionary units can be used to qualify a project for a density bonus; to ensure that common definitions are consistent (such as those for affordable housing cost, moderate-income, etc.), and to clarify the minimum affordable housing requirements that apply to every residential development.

## Conclusion

California's density bonus law is a confusing and ambiguous statute that relates poorly to, and undermines, planning and zoning law. Although density bonus projects are not common, the law contains numerous protections for applicants, and communities that are unprepared may find themselves seemingly forced to approve an undesirable project. Preparing a local density bonus ordinance that clarifies ambiguities and requires detailed information from the applicant can give counties and cities the tools they need to achieve attractive projects while meeting the statute's intent.

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<sup>62</sup> Section 65915(f)(1) states that a concession or incentive includes "a reduction . . . in the ratio of vehicular parking spaces that would otherwise be required." A public agency's view is that the parking standards included in the statute are below those that would otherwise be required by the zoning. However, applicants might argue that, since localities *must* grant the parking standards included in the statute, this is not a reduction below "what would otherwise be required," since more spaces could not be required.

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**THE CITY OF SAN DIEGO  
OFFICE OF THE INDEPENDENT BUDGET ANALYST REPORT**

**Date Issued:** January 26, 2007

**IBA Report Number:** 07-17

**City Council Docket Date:** January 30, 2007

**Item Number:** 331

**Subject:** Amendments to Regulations Related to Affordable Housing Density Bonus

**OVERVIEW**

This item will amend the following sections of the San Diego Municipal Code as they pertain to affordable housing density bonus regulations:

- Chapter 12, Article 6, Division 7
- Chapter 14, Article 1, Division 3
- Chapter 14, Article 3, Division 7

The primary purpose of the draft regulations is to bring the City's regulations into conformance with state density bonus law. Also, included into this proposal is the introduction of two City-initiated amendments. The Council has the option of approving only the state-mandated amendments and approving/denying/modifying the City-initiated amendments.

**FISCAL/POLICY DISCUSSION**

The basic concept behind California Government Code §65915 is to provide density bonuses and other incentives to developers who voluntarily set aside affordable units in housing developments. Currently, the City's regulations as they pertain to affordable housing density bonuses are out of date. Changes in state regulations have occurred to encourage developers by providing additional bonuses and incentives/concessions with an end result of increasing the amount of affordable housing.

The City is also introducing two City-initiated amendments to:

1. Include a density bonus incentive for applicants that elect to satisfy their required inclusionary housing requirement onsite rather than through payment of an in-lieu fee.
2. Increase the minimum density bonus for projects that provide moderate income housing within common interest developers. It is believed that the state's minimum requirement of 5 percent is not a sufficient/viable incentive due to the



**Office of Independent Budget Analyst**

202 C Street, MS 3A • San Diego, CA 92101  
Tel (619) 236-6555 Fax (619) 236-6556

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region's high cost of providing affordable units and the City is exercising its option of offering a more generous density bonus ratio.

The table below details the significant state requirements. This table is also the basis for Tables 143-07A through C of the proposed Municipal Code revisions in which the density bonus calculations are detailed.

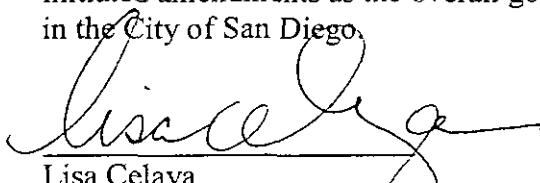
Type of Affordable Housing	Minimum Set Aside	Minimum Density Bonus	Sliding Scale for Density Bonus	Additional Incentives or Concessions
Very low income	5%	20%	Every 1% increase in set aside translates into 2.5% density bonus increase, up to 35%	One for 5% set aside; Two for 10% set aside; Three for 15% set aside
Lower Income	10%	20%	Every 1% increase in set aside translates into 1.5% density bonus increase up to 35%	One for 10% set aside; Two for 20% set aside; Three for 30% set aside
Moderate income	10%	5% City Mandate: 20%	Every 1% increase in set aside translates into 1% density bonus increase, up to 35%	One for 10% set aside; Two for 20% set aside; Three for 30% set aside

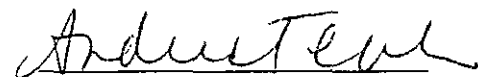
Source: California Real Property Journal

Developers may be granted up to three incentives or concessions. The City believes that the most typical incentives/concessions that will be requested are in relation to setbacks, height limitations and parking. These regulations will not be implemented in the Coastal Overlay Zone until accepted by the California Coastal Commission.

## CONCLUSION

The IBA supports the approval of both the state-mandated amendments and the two City-initiated amendments as the overall goal is to increase the amount of affordable housing in the City of San Diego.

  
 Lisa Celaya  
 Fiscal & Policy Analyst

  
 APPROVED: Andrea Tevlin  
 Independent Budget Analyst



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THE CITY OF SAN DIEGO  
**REPORT TO THE CITY COUNCIL**

DATE ISSUED: January 24, 2007      REPORT NO.: 07-021

ATTENTION: Council President and City Council  
Agenda of January 30, 2007

SUBJECT: Affordable Housing Density Bonus. Project Number 63422.  
Citywide. Process Five.

REFERENCE: Manager's Report Nos. 03-237, 04-127, 05-028, 05-107.  
Planning Commission Report No. PC06 -264.

REQUESTED ACTION: Approval of amendments to the Land Development Code related to the city's Affordable Housing Density Bonus regulations.

STAFF RECOMMENDATION:

1. **CERTIFY** Supplement to Environmental Impact Report No. 96-0333 (Project 63422) and adopt the Findings and Statement of Overriding Considerations.
2. **APPROVE** the amendments to the Land Development Code and the City's Local Coastal Program related to the city's Affordable Housing Density Bonus regulations (Chapter 12, Article 6, Division 7; Chapter 14, Article 1, Division 3; and Chapter 14, Article 3, Division 7).

SUMMARY:

State law requires cities in California to grant density bonuses and development incentives to residential projects when restrictions are implemented to maintain specified affordability levels. San Diego's Municipal Code includes local regulations intended to fulfill this state requirement.

The state has amended its affordable housing density bonus three times since 2003 with the latest amendment being implemented in January 2006. The intent of the amendments was to increase the use of the state density bonus program and thereby increase the supply of affordable housing in the state. Passage of these bills has made San Diego's density bonus regulations outdated and

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partially out of compliance with state law. The draft Affordable Housing Density Bonus regulations in Attachment 1 incorporate current state requirements as well as two city-initiated amendments. Although the reorganization of the regulations may make it difficult to follow, a strikeout/underline of the regulations has been provided as Attachment 2.

Planning Commission Recommendation:

On October 12, 2006 the Planning Commission voted 5-0-0 to recommend approval of the proposed amendments related to affordable housing density bonus with the following recommendations:

- Investigate the relationship between parking needs and affordable housing to determine if the parking standards should be reduced.
- Look at the relationship between the locations of projects using density bonus and transit to see if there can be a further reduction in parking requirements.
- Attempt to simplify the way the regulations are written to make them more user friendly.
- Track the use of the density bonus provisions to learn where they are being used, the deviations requested, and how existing zoning patterns in the city may be affecting its use.
- Consider allowing applicants that satisfy the affordable housing component of the regulations to request the incentive(s) provided in the regulations while forgoing the increase in density.
- Remove the option of the in-lieu fee in the Inclusionary housing Ordinance.

Background:

The purpose of this draft of the Affordable Housing Density Bonus regulations is to bring the city's regulations into conformance with state density bonus law. Current state density bonus law requires that the density bonus be granted ministerially (Process One). It also states that an applicant may be granted up to three incentives ministerially. The number of incentives to be granted is based upon the percentage of affordable units in a project and the level of affordability (very low income, low income, or moderate income). The incentives may take the form of deviations from development regulations. State law also directs that an applicant proposing a project that uses density bonus by itself, cannot be required to process a land use plan or zoning ordinance amendment. However, applicants requesting deviations to regulations, or changes to land use plans or zoning beyond those permitted through the affordable housing density bonus regulations shall be required to comply with current Land Development Code processes.

Project Description:

The draft Affordable Housing Density Bonus Regulations in Attachment 1 reflect the amendments made to state density bonus law. The following is a summary of significant changes to state density bonus law that have been enacted.

- A new density bonus category was added for projects that donate land to the city for developing affordable housing.

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- A new density bonus category was added for projects that include for-sale moderate income housing units in common interest developments.
- Upon resale of a moderate-income unit developed under the density bonus law, the local government shall recapture both the initial subsidy and a proportionate share of appreciation, unless it conflicts with another funding source or law.
- All rental projects that receive a density bonus must maintain the affordable units at the required affordability level for 30 years.
- The maximum state density bonus was increased from 25 percent to 35 percent. A sliding scale of density bonus was created. The percent density bonus an applicant is granted is determined by the percentage of affordable units provided and the level of affordability (low income, very low income, or moderate income).
- The city must grant up to three incentives to qualifying projects that request incentives. The number of incentives a project is eligible for depends upon the percentage of affordable units being provided and the level of affordability.
- Applicants choose the incentives. The city must grant the requested incentive(s) unless specific findings are made that granting the request would not be necessary to provide the affordable units; or that the requested deviation would have an adverse impact on health, safety, the physical environment, or property listed on the California Register of Historical Resources.
- The city must offer an additional incentive to qualifying projects that include on site day care facilities meeting specified conditions.
- The revised state law limits parking standards that a city can place on projects seeking a density bonus. Furthermore, a development using density bonus may use tandem or uncovered parking to meet the parking standard.
- Density bonus for senior developments also applies to senior mobilehome parks.

In addition to the state required amendments for affordable housing density bonus are two city-initiated amendments. At the direction of the Land Use and Housing Committee, staff has included a density bonus incentive for applicants that elect to satisfy their required inclusionary housing requirement onsite rather than through payment of an in-lieu fee. The "onsite building bonus" would provide a density bonus equal to the number of affordable units provided, up to a maximum of 10 percent of the total pre-density units in the project to be approved ministerially. An applicant could apply for both the state density bonus and the onsite building bonus up to a maximum allowable density bonus of 35 percent.

The second city-initiated amendment would increase the minimum density bonus for projects that provide moderate income housing within common interest developments. The Housing Commission and the City Planning and Community Investment Department believe that the state's

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minimum requirement for a 5 percent density bonus for moderate-income ownership units is not sufficient to offset the cost of providing affordable units in San Diego due to the region's high costs and is therefore not a viable incentive. Since cities do have the option of offering a more generous density bonus ratio than that required by the state, it is recommended that in San Diego, the minimum density bonus for moderate income projects be increased to 20 percent. An applicant could apply for this bonus and the state density bonus up to a maximum allowable density bonus of 35 percent as allowed per state law, without processing a rezone or community plan amendment to increase the density on a site.

Additional modifications and clarifications have been incorporated into the regulations in response to recommendations made by the Planning Commission on October 12, 2006. Regarding parking, the parking ratio for units of 4 or more bedrooms has been reduced from the state requirement of 2.50 spaces per unit to the citywide standard of 2.25 spaces per unit and clarifying language has been added to make clear that projects may take advantage of reductions in parking currently permitted for projects within the Transit Area Overlay Zone and for units designated for very low income households. Regarding the Commission's concerns regarding the complexity of the regulations, staff has made modifications to the regulations and the Development Services Department will develop an Affordable Housing Density Bonus information bulletin to assist the public. The Planning Commission's direction to track projects using the density bonus program is an administrative function that can be accomplished. Staff has provided as Attachment 6 a graphic illustrating Income and Density Bonus Project Distribution throughout the City of San Diego as of 2006.

The Planning Commission also asked that consideration be given to modifying the regulations to allow applicants that provide the required percentage of affordable housing units to take advantage of the incentives in the regulations without accepting the density bonus units. It is clear that the state density bonus legislation was written to provide incentives only to projects that use the density bonus. Regulations that provide incentives for applicants that provide a required percentage of affordable housing units, without the increased density, will be part of a separate ordinance to be brought to the City Council for consideration later in the year.

Due to the complexity of the state density bonus regulations, the Housing Commission has drafted a procedures manual. This manual is to be used by potential density bonus applicants, to explain the procedures and requirements for each of the categories. It contains information regarding application procedures, agreements, restrictions, affordability requirements, development incentives, rents and for-sale prices, information on the interaction/relationship between the proposed onsite building bonus and state density bonus provisions, and Housing Commission fees for administering the program.

The ordinance approving the amendments to these regulations will be crafted to allow implementation in those areas of the city outside the Coastal Overlay Zone 30 days after the second reading by the City Council. Implementation in areas within the Coastal Overlay Zone will become effective upon the unconditional certification of the regulations by the California Coastal Commission.

Environmental Analysis:

The City of San Diego previously prepared Environmental Impact Report No. 96-0333 for revisions to the Land Development Code. It has been determined that the proposed amendments to the Affordable Housing Density Bonus regulations may result in significant impacts not discussed in the previous EIR. The proposed amendments have the potential to result in significant impacts to visual quality, transportation, and parking; and cumulative impacts to visual quality and parking. The extent to whether these potential impacts may or may not occur depends several factors, including but not limited to, project review process (ministerial versus discretionary), site specific project location, surrounding natural and built characteristics, project design, and the ability to make the required findings to deny incentives that could result in an impact.

FISCAL CONSIDERATIONS:

The costs of processing this amendment to the city's density bonus regulations are shared by the City Planning and Community Investment Department which is funded through the general fund and the Development Services Department Code Update Section which is funded as an overhead expense in the Development Services Department's budget.

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

Housing Commission - On April 8, 2005 the Housing Commission voted 4-0-0 to generally support the staff recommendation while expressing the view that the primary goal should be to provide incentives for low and very low income housing.

Land Use & Housing Committee (LU&H) - On May 11, 2005, the Committee voted to accept the proposed ordinance and directed staff to prepare the required environmental documentation for Planning Commission and City Council consideration and adoption. LU&H provided the following direction to staff:

1. Answer more completely the Committee's questions regarding use of different approval process levels and differential findings for different elements of the program in order to adequately address community concerns.
2. Direct the Intergovernmental Relations Department to bring state legislation affecting local housing and land use policy to the attention of the Committee for possible review and comment prior to adoption by the state or federal legislatures.
3. Chart and track projects that take advantage of the density bonus program. Monitor the number of incentive(s) a project uses, the project location, and to what extent the project relies on state versus local elements of the program.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:


Code Monitoring Team (CMT) - On April 12, 2006, the City's CMT voted 6-0-1 to support staff recommendation.

Technical Advisory Committee (TAC) - On March 9, 2005 the TAC voted 7-0-0 to support staff recommendation with four recommendations. The first was that the proposed density bonus for projects that satisfy their inclusionary housing on site be expanded to also include the regulatory incentives afforded the state density bonus categories. Expanding this bonus to also include the incentives would dilute the incentive of providing additional affordable housing (beyond that required by the Inclusionary Housing Regulations) through the density bonus regulations. The second and third recommendations were that the review process for deviations for projects requesting a density bonus be reduced from the current city-wide Process Four to a Process Three, and that a separate category of density bonus should be developed for accessible units. Projects utilizing density bonus would be entitled to up to three deviations/incentives ministerially. Reducing a decision level for deviating from citywide zoning regulations as well as addressing the need for accessible living units should be considered citywide and not in a piecemeal fashion for only for certain project types. The fourth recommendation was that the minimum density bonus for moderate income housing be increased from 5 percent to 20 percent in recognition of the high development costs in San Diego. This has been included as a city-initiated amendment.

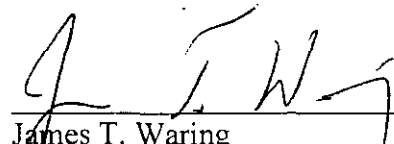
Community Planners Committee (CPC) - On February 22, 2005, the CPC voted 11-1-0 to oppose staff recommendation and recommended that the regulations be revised to not vary from or exceed the requirements of the State required Density Bonus Program. Specifically, the CPC did not support the two city-initiated amendments. Staff believes that the CPC recommendation to oppose the city-initiated bonuses for moderate-income for-sale units and construction of inclusionary housing onsite would likely remove both the incentive to provide housing in the moderate-income category and the incentive to construct inclusionary housing onsite. Staff believes the two city-initiated amendments would result in additional affordable housing units, and in the case of the onsite building bonus, those affordable housing units would be developed more rapidly than they would thorough collection of in-lieu fees.

KEY STAKEHOLDERS:

The key stakeholders include the building industry and those organizations that advocate for increasing the city's supply of affordable housing.

  
 William Anderson, FAICP  
 Director, City Planning and  
 Community Investment Department

ANDERSON/DJ

  
 James T. Waring  
 Deputy Chief of Land Use and  
 Economic Development

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- ATTACHMENTS:
1. Draft Regulations Related to Affordable Housing Density Bonus
  2. Strikeout/Underline Comparing Existing and Draft Regulations
  3. Comparison between State Requirement and City Proposal for Moderate Income Density Bonus
  4. Parking for Projects Utilizing Affordable Housing Density Bonus
  5. Density Bonus Projects by Planning Areas and by Council Districts
  6. Income and Density Bonus Project Distribution (2006)

**000808****DRAFT****Article 3: Supplemental Development Regulations****Division 7: Affordable Housing Density Bonus Regulations***(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)***§143.0710 Purpose of Affordable Housing Density Bonus Regulations**

The purpose of these regulations is to provide increased residential *density* to developers who guarantee that a portion of their residential *development* will be available to *moderate income, low income, very low income, or senior households*. The regulations are intended to materially assist the housing industry in providing adequate and affordable shelter for all economic segments of the community and to provide a balance of housing opportunities for *moderate income, low income, very low income, and senior households* throughout the City. It is intended that the affordable housing *density* bonus and any additional *development* incentive be available for use in all residential *development* of five or more units, using criteria and standards provided in the Progress Guide and General Plan, as defined by the San Diego Housing Commission; that requests be processed by the City of San Diego, and that they be implemented by the President and Chief Executive Officer of the San Diego Housing Commission. It is also intended that these regulations implement the provisions of California Government Code Sections 65915 through 65918.

**§143.0715 When Affordable Housing Density Bonus Regulations Apply**

This division applies to any residential *development* of five or more pre-*density* bonus *dwelling units* where an *applicant* proposes *density* beyond that permitted by the applicable zone in exchange for either of the following as set forth in this division:

- (a) A portion of the total *dwelling units* in the development being reserved for *moderate, low, or very low income households or for senior citizens* through a written agreement with the San Diego Housing Commission; or
- (b) The donation of land.

**§143.0720 Density Bonus in Exchange for Affordable Housing Units**

- (a) A *development* shall be entitled to a *density* bonus and incentives as described in this division, for any residential *development* for which an agreement, and a deed of trust securing the agreement, is entered into by the *applicant* and the President and Chief Executive Officer of the San Diego Housing Commission. The agreement and deed of trust in favor of the San Diego Housing Commission are to be recorded in the Office of the Recorder of the County of San Diego as an encumbrance against the *development*.



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- (b) The density bonus units authorized by this division shall be exempt from the Inclusionary Housing Regulations set forth in Chapter 14, Article 2, Division 13.
- (c) A rental *density* bonus agreement shall utilize the following qualifying criteria consistent with the procedures established by the San Diego Housing Commission:
  - (1) Housing for senior citizens - The *development* consists of housing for senior citizens or qualifying residents as defined under California Civil Code Section 51.3 and 51.12, where at least 35 *dwelling units* are provided; or a mobilehome park that limits residency based on age requirements for housing for older persons pursuant to California Civil Code Section 798.76 or 799.5.
  - (2) Affordable housing units -
    - (A) *Low income* - At least 10 percent of the pre-*density* bonus units in the *development* shall be affordable, including an allowance for utilities, to *low income* households at a rent that does not exceed 30 percent of 60 percent of area median income, as adjusted for assumed household size; or
    - (B) *Very low income* - At least 5 percent of the pre-*density* bonus units in the *development* shall be affordable, including an allowance for utilities, to *very low income* households at a rent that does not exceed 30 percent of 50 percent of the area median income, as adjusted for assumed household size.
    - (C) The affordable units shall be designated units, be comparable in bedroom mix and amenities to the market-rate units in the *development*, and be dispersed throughout the *development*.
  - (3) The *dwelling units* shall remain available and affordable for a period of at least 30 years or longer as may be required by other laws.
- (d) A for-sale *density* bonus agreement shall utilize the following qualifying criteria consistent with the procedures established by the San Diego Housing Commission:
  - (1) For-sale density bonus shall only be available to common interest *development*, as defined by California Civil Code Section 1351, where at least 10 percent of the pre-*density* bonus units in the

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*development* shall be initially sold and affordable to *moderate income* households at a price that is affordable to families earning 110 percent of the area median income as adjusted or assumed household size, as determined by the San Diego Housing Commission, and where all of the *dwelling units* are offered to the public for purchase.

- (2) Prior to, or concurrent with, the sale of each *density* bonus affordable unit, the *applicant* shall require the buyer to execute and deliver a promissory note in favor of the San Diego Housing Commission so that the repayment of any initial subsidy is ensured.
- (3) Each for-sale unit shall be occupied by the initial owner at all times until the resale of the unit.
- (4) Upon the first resale of a unit the seller shall comply with all conditions regarding the sale of a unit, as applied by the San Diego Housing Commission, and as set forth in California Government Code Section 65915(c)(2).
- (5) The affordable units shall be designated units, be comparable in bedroom mix and amenities to the market-rate units in the *development*, and be dispersed throughout the *development*.
- (e) The *density* bonus units shall have recorded against them a Declaration of Covenants, Conditions and Restrictions in favor of the San Diego Housing Commission that shall enjoy first lien position and shall be secured by a deed of trust that may be recorded against the project or unit, as applicable, prior to construction or permanent financing.
- (f) Provision shall be made by the San Diego Housing Commission for certification of eligible tenants and purchasers, annual certification of property owner compliance, payment of a monitoring fee to the San Diego Housing Commission, as adjusted from time to time, for monitoring of affordable unit requirements, and any other terms that the San Diego Housing Commission determines are needed to implement the provisions and intent of this division and State law.

**§143.0725 Density Bonus Provisions**

A *development* proposal requesting an affordable housing *density* bonus is subject to the following:

- (a) For senior citizen housing meeting the criteria of Section 143.0720(c)(1), the *density* bonus shall be 20 percent.

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- (b) For *development* that includes affordable housing, pursuant to the Inclusionary Housing Regulations in Chapter 14, Article 2, Division 13, and that affordable housing is located onsite, that *development* shall be entitled to a *density* bonus, equal to the number of affordable units provided onsite, up to a maximum of 10 percent of the pre-*density* bonus units. The increased *density* shall be in addition to any other increase in *density* allowed in this division, up to a maximum combined *density* increase of 35 percent.
- (c) For development meeting the criteria for *low income* in Section 143.0720(c)(2)(A), the *density* bonus shall be calculated as set forth in Table 143-07A. The increased *density* shall be in addition to any other increase in *density* allowed in this division, up to a maximum combined *density* increase of 35 percent. For *development* meeting the same criteria within the Centre City Planned District, the bonus shall apply to the maximum allowable *floor area ratio* applicable to the *development* consistent with Section 151.0310(e).
- (d) For *development* meeting the criteria for *very low income* in Section 143.0720(c)(2)(B), the *density* bonus shall be calculated as set forth in Table 143-07B. The increased *density* shall be in addition to any other increase in *density* allowed in this division, up to a maximum combined *density* increase of 35 percent. For *development* meeting the same criteria within the Centre City Planned District, the bonus shall apply to the maximum allowable floor area ratio applicable to the *development* consistent with Section 151.0310(e).
- (e) For *development* meeting the criteria for *moderate income* in Section 143.0720(d), the *density* bonus shall be calculated as set forth in Table 143-07C. The increased *density* shall be in addition to any other increase in *density* allowed in this division, up to a maximum combined *density* increase of 35 percent. For *development* meeting the same criteria within the Centre City Planned District, the bonus shall apply to the maximum allowable floor area ratio applicable to the *development* consistent with Section 151.0310(e).
- (f) Where the zone requires that each *lot* be occupied by no more than one *dwelling unit*, the *development* requires a Planned Development Permit.
- (g) If the *premises* is located in two or more zones, the number of *dwelling units* permitted in the *development* is the sum of the *dwelling units* permitted in each of the zones. Within the *development*, the permitted number of *dwelling units* may be distributed without regard to the zone boundaries.
- (h) Where the *development* consists of two or more specifically identified parcels, whether contiguous or noncontiguous, the maximum number of

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*dwelling units* permitted on each parcel is calculated based on the area of that parcel.

- (i) Where the *development* consists of two or more noncontiguous parcels lying within two or more community planning areas, the *dwelling units* reserved at levels affordable by *moderate income*, *low income* or *very low income* households shall be distributed among community planning areas in the same proportion as the total number of *dwelling units* constructed within the *development*.

**§143.0730 Density Bonus in Exchange for Donation of Land**

An *applicant* for a *tentative map*, *parcel map*, or residential *development* permit, may donate land to the City for *development* with affordable housing units, in exchange for a *density* bonus, in accordance with California Government Code Section 65915, provided the land to be transferred meets the following criteria:

- (a) The site is at least 1 acre or of sufficient size to permit *development* of at least 40 affordable *dwelling units*;
- (b) The General Plan designation is appropriate for residential *development*;
- (c) The site is zoned to allow for the appropriate residential *development*;
- (d) The site is or will be served by public facilities and infrastructure adequate to serve the *dwelling units*; and
- (e) The land to be transferred is within the boundary of the proposed *development* or, if the City agrees, within one-quarter mile of the boundary of the proposed *development*.

**§143.0740 Development Incentives for Affordable Housing Density Bonus Projects**

- (a) The City shall grant an incentive requested by an applicant, to the extent allowed by State law and as set forth in this Section.
  - (1) An incentive means any of the following:
    - (A) A deviation to a *development* regulation;
    - (B) Approval of a mixed use *development* in conjunction with the residential development if the commercial, office, or industrial uses will reduce the cost of the residential development; and if the mixed use *development* is compatible with the residential *development*; and if the mixed use *development* is compatible with the applicable land use plan;

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- (C) Any other regulatory deviation proposed by the applicant, other than a waiver from a required permit, which results in identifiable, financially sufficient, and actual cost reductions.
- (2) The granting of an incentive shall not be interpreted, in and of itself, to require a General Plan amendment, zoning change, or other discretionary approval, notwithstanding Planned Development Permit Procedures (Chapter 12, Article 6, Division 6).
- (3) Nothing in this division shall be construed to require the City or any of its related legal entities, including the San Diego Housing Commission, to provide a direct financial incentive, including the provision of land, or the waiver of fees or dedication requirements.
- (4) Upon an *applicant's* request, *development* meeting the requirements of Sections 143.0720(c) or (d) shall be entitled to incentives pursuant to Section 143.0740(b) unless the City makes a written finding based upon substantial evidence, of either of the following:
  - (A) The incentive is not required in order to provide for affordable housing costs, as defined in California Health and Safety Code Sections 50052.5 and 50053.
  - (B) The incentive would have a specific adverse impact upon health and safety or the physical environment or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the *development* unaffordable to *low* and *moderate income* households.
- (b) Incentives shall be granted through Process One. The number of incentives provided are identified in Table 143-07A for *low income*, Table 143-07B for *very low income*, and Table 143-07C for *moderate income* consistent with the percentage of pre-density bonus units identified in column one of the tables.

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*Low Income Density Bonus*  
Table 143-07A

Percent <i>Low Income</i> units	Percent Density Bonus	Number of Incentives
10	20	1
11	21.5	1
12	23	1
13	24.5	1
14	26	1
15	27.5	1
16	29	1
17	30.5	1
18	32	1
19	33.5	1
20 ~ 29	35	2
≥ 30	35	3

*Very Low Income Density Bonus*  
Table 143-07B

Percent <i>Very</i> <i>Low Income</i> Units	Percent Density Bonus	Number of Incentives
5	20	1
6	22.5	1
7	25	1
8	27.5	1
9	30	1
10	32.5	2
11 - 14	35	2
≥ 15	35	3

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Table 143-07C

Percent <i>Moderate Income</i> Units	Percent Density Bonus	Number of Incentives
10	20	1
11	21	1
12	22	1
13	23	1
14	24	1
15	25	1
16	26	1
17	27	1
18	28	1
19	29	1
20	30	2
21	31	2
22	32	2
23	33	2
24	34	2
25 - 29	35	2
≥ 30	35	3

- (c) Child Care Center: *Development* that meets the criteria in 143.0720 and includes a child care center as defined in Section 141.0606(a)(2) as part of, or adjacent to, such *development* shall be entitled to an additional *density* bonus or incentive provided that:
- (1) The child care center remains in operation for the greater of 30 years, or the period of time established by Section 143.0720(c)(3);
  - (2) The percentage of children from *low, very low, or moderate income* households attending the child care center is equal to or greater than the percentage of those same households required in the residential *development*;
  - (3) The additional density bonus or incentive requested is either:
    - (A) An additional *density* bonus in an amount equal to the amount of square feet in the child care center up to a maximum combined *density* increase of 35 percent; or
    - (B) An additional incentive that contributes significantly to the *economic feasibility of the construction of the child care center*; and

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- (4) The City finds, based upon substantial evidence, that the community is inadequately served by child care centers.
- (d) Parking: In addition to any other incentive, and upon the request of an *applicant* that proposes a *development* meeting the criteria of Section 143.0720(c) or (d) the City shall apply the following vehicular parking ratio, inclusive of handicapped and guest parking:
  - (1) Zero to one bedroom: one onsite parking space
  - (2) Two to three bedrooms: two onsite parking spaces
  - (3) Four and more bedrooms: two and one-quarter parking spaces
  - (4) Reductions to the parking ratios shall be granted as follows:
    - (i) *Development* that is at least partially within a *transit area* as described in Chapter 13, Article 2, Division 10 (Transit Area Overlay Zone) or that is subject to Chapter 13, Article 2, Division 11 (Urban Village Overlay Zone), shall receive a 0.25 space per *dwelling unit* reduction in the parking ratio for the entire *development*.
    - (ii) *Development* that includes *dwelling units* limited to occupancy by *very low income* households shall receive a 0.25 space reduction in the parking ratio for each *dwelling unit* that is limited to occupancy by a *very low income* household.
    - (iii) *Development* that includes *dwelling units* limited to occupancy by *very low income* households, and is at least partially within a *transit area*, shall receive a 0.50 space reduction in the parking ratio for each *dwelling unit* that is limited to occupancy by a *very low income* household.
- (5) For purposes of this division, a *development* may provide onsite parking through tandem parking or uncovered parking, but not through on-street parking or parking within a required front yard setback.

**§143.0750 Development in the Coastal Overlay Zone**

- (a) *Development* within the Coastal Overlay Zone that proposes to use the regulations of this division shall be subject to the applicable certified land use plan and implementing ordinances, including a Coastal Development



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Permit (Chapter 12, Article 6, Division 7), as described in Chapter 13, Article 2, Division 4.

- (b) The City may consider deviations from the Environmentally Sensitive Lands Regulations in Chapter 14, Article 3, Division 1 when requested by an *applicant* as an incentive for providing affordable housing consistent with this division, provided that the *findings* in Section 126.0708(b)(2) can be made.

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## Findings for Coastal Development Permit Approval

An application for a Coastal Development Permit may be approved or conditionally approved only if the decision maker makes all of the *findings* in Section 126.0708(a) and the supplemental *findings* in Section 126.0708(b) that are applicable to the proposed *development*.

- (a) [no change]
- (b) Supplemental Findings - Environmentally Sensitive Lands Within the Coastal Overlay Zone
  - (1) When a deviation is requested from the Environmentally Sensitive Lands Regulations because the *applicant* contends that application of the regulations would result in denial of all economically viable use, the following shall apply:
    - (A) Any *development permit* in the Coastal Overlay Zone, required in accordance with Section 143.0110 because of potential impacts to *environmentally sensitive lands* where a deviation is requested in accordance with Section 143.0150 may be approved or conditionally approved only if the decision maker makes the following supplemental *findings* and the supplemental *findings* for deviations from the Environmentally Sensitive Lands Regulations in addition to the *findings* for the applicable *development permit(s)*:
      - (i) Based on the economic information provided by the *applicant*, as well as any other relevant evidence, each use provided for in the Environmentally Sensitive Lands Regulations would not provide any economically viable use of the *applicant's* property;
      - (ii) Application of the Environmentally Sensitive Lands Regulations would interfere with the *applicant's* reasonable investment-backed expectations;
      - (iii) The use proposed by the *applicant* is consistent with the applicable zoning;
      - (iv) The use and project design, siting, and size are the minimum necessary to provide the *applicant* with an economically viable use of the *premises*; and
      - (v) The project is the least environmentally damaging alternative and is consistent with all provisions of

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the certified Local Coastal Program with the exception of the provision for which the deviation is requested.

- (B) The Coastal Development Permit shall include a determination of economically viable use.
  - (C) The public hearing on the Coastal Development Permit shall address the economically viable use determination.
  - (D) The *findings* adopted by the decision making authority shall identify the evidence supporting the *findings*.
- (2) A deviation from the Environmentally Sensitive Lands Regulations when requested as an incentive for providing affordable housing pursuant to the Affordable Housing Density Bonus Regulations in Chapter 14, Article 3, Division 7, may be approved or conditionally approved only if the decision maker makes the following supplemental *findings* in addition to the *findings* in Section 126.0708(a)(1) through (4):
- (A) Feasible alternatives to the requested incentive and the effect of such alternatives on coastal resources have been considered;
  - (B) Granting the incentive or alternative will not adversely affect coastal resources.

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## §141.0310 Housing for Senior Citizens

Housing for senior citizens may be permitted with a Conditional Use Permit decided in accordance with Process Three in the zones indicated with a "C" in the Use Regulations Tables in Chapter 13, Article 1 (Base Zones) subject to the following regulations.

- (a) [no change]
- (b) Housing for senior citizens may be permitted a *density* bonus as provided in Chapter 14, Article 3, Division 7 (Affordable Housing *Density* Bonus Regulations).
- (c) through (e) [no change]

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## Article 3: Supplemental Development Regulations

## Division 7: Affordable Housing Density Bonus Regulations

*(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)*

## §143.0710 Purpose of Affordable Housing Density Bonus Regulations

The purpose of these regulations is to provide increased residential ~~densities~~*density* to developers who guarantee that a portion of their residential ~~development~~ will be available to *moderate income, low income, very low-income,* or senior households. The regulations are intended to materially assist the housing industry in providing adequate and affordable shelter for all economic segments of the community and to provide a balance of housing opportunities for *moderate income, low income, very low-income,* and senior households throughout the City. It is intended that the affordable housing *density* bonus and any additional ~~development~~*development* incentive be available for use in all residential ~~developments~~*development of five or more units*, using criteria and standards provided in the Progress Guide and General Plan, as defined by the San Diego Housing Commission; that requests be processed by the City of San Diego, and that they be implemented by the President and Chief Executive Officer of the San Diego Housing Commission. It is also intended that these regulations implement the provisions of California Government Code Sections 65915 through 65918.

## §143.0715 When Affordable Housing Density Bonus Regulations Applies

- (a) This division applies to any residential *development* of five or more *pre-density bonus dwelling units* ~~*dwelling units*~~ where an *applicant* proposes *density* beyond that permitted by the applicable zone in exchange for either of the following as set forth in this division:
  - (a) Aa portion of the total ~~dwelling units~~*dwelling units* in the development being reserved for *moderate, low, or very low-income* households or for senior citizens or qualified residents through a written agreement with the San Diego Housing Commission; or
  - (b) An ~~applicant~~ proposing ~~development~~ as provided in Section 143.0715(a) shall be entitled to a *density* bonus as provided in Sections 143.0720 and 143.0730 and may be granted an additional development incentive as provided in Section 143.0740.
  - (b) The donation of land.

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Density Bonus in Exchange for Affordable Housing Units  
~~Density Bonus Agreement~~

- (a) ~~An applicant~~development shall be entitled to a *density* bonus and incentives as described in this division, for any residential development for which an agreement, and a deed of trust securing the agreement, is entered into by the applicant and the President and Chief Executive Officer of the San Diego Housing Commission as provided in Section 143.0720(b). The agreement and deed of trust in favor of the San Diego Housing Commission are to be recorded in the Office of the Recorder of the County of San Diego as an encumbrance against the development.
- (b) The density bonus units authorized by this division shall be exempt from the Inclusionary Housing Regulations set forth in Chapter 14, Article 2, Division 13.
- (c) ~~The~~A rental density bonus agreement shall includeutilize the following provisionsqualifying criteria consistent with the procedures established by the San Diego Housing Commission:
- (1) Housing for senior citizens - The development consists of housing for senior citizens or qualifying residents as defined under California Civil Code Section 51.3 and 51.12, where at least 35 dwelling units are provided; or a mobilehome park that limits residency based on age requirements for housing for older persons pursuant to California Civil Code Section 798.76 or 799.5.
- (12) ~~With respect to rental housing affordable units:~~Affordable housing units -
- (A) Low income - At least 20~~10~~ percent of the pre-density bonus units in the development shall~~will~~ be affordable, including an allowance for utilities, to low-income households at a rent that does not exceed 30 percent of 60 percent of area median income, as adjusted for assumed household size; or
- (B) Very low income - At least 10~~5~~ percent of the pre-density bonus units in the development shall~~will~~ be affordable, including an allowance for utilities, to very low-income households at a rent that does not exceed 30 percent of 50 percent of the area median income, as adjusted for assumed household size; or
- (C) ~~At least 50 percent of the total units will be available to senior citizens or qualifying residents as defined under California Civil Code Section 51.3.~~

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- (4C) The affordable units shall be designated units, ~~which are~~ comparable in bedroom mix and amenities to the market-rate units in the *development*, and ~~are~~ dispersed throughout the *development*.
- (5) ~~Provision shall be made for certification of eligible tenants, and purchasers, annual certification of property owner compliance, and payment of a monitoring fee, as adjusted from time to time, for monitoring of affordable unit requirements.~~
- (3) The *dwelling units* shall remain available and affordable for a period of at least 30 years or longer as may be required by other laws.
- (2d) A for-sale *density* bonus agreement shall utilize the following qualifying criteria consistent with the procedures established by the San Diego Housing Commission. With respect to "for sale" housing affordability shall be determined based on prevailing underwriting standards of mortgage financing available for the *development*, which shall include a forgivable second, silent mortgage, as administered by the Housing Commission.
- (1) For-sale density bonus shall only be available to common interest *development*, as defined by California Civil Code Section 1351, where At least 2010 percent of the pre-*density* bonus units in the *development* shall be initially sold and affordable to moderate income households at a price that is affordable to families earning 110 percent of the area median income as adjusted or assumed household size, as determined by the San Diego Housing Commission, and where all of the *dwelling units* are offered to the public for purchase, available to low-income purchasers or 10 percent of the pre-bonus units shall be available to very low-income purchasers or at least 50 percent of the pre-bonus units in the *development* shall be available to senior citizens or qualifying residents as defined under California Civil Code Section 51.3.
- (2) Prior to, or concurrent with, the sale of each *density* bonus affordable unit, the *applicant* shall require the buyer to execute and deliver a promissory note in favor of the San Diego Housing Commission so that the repayment of any initial subsidy is ensured.
- (3) Each for-sale unit shall be occupied by the initial owner at all times until the resale of the unit.

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- (4) Upon the first resale of a unit the seller shall comply with all conditions regarding the sale of a unit, as applied by the San Diego Housing Commission, and as set forth in California Government Code Section 65915(c)(2).
- (45) The affordable units shall be designated units, which are be comparable in bedroom mix and amenities to the market-rate units in the *development*, and are be dispersed throughout the *development*.
- (3) ~~The affordable units will remain available and affordable as provided in Section 143.0720 for a period of at least 30 years if an additional development incentive is granted to the *applicant* as provided in Section 143.0740 or 10 years if an additional development incentive is not granted. If an *applicant* does not request an additional development incentive, the *applicant* shall submit a pro-forma analysis for the Chief Executive Officer of the Housing Commission to document project feasibility.~~
- (e) The *density* bonus units shall have recorded against them a Declaration of Covenants, Conditions and Restrictions in favor of the San Diego Housing Commission that shall enjoy first lien position and shall be secured by a deed of trust that may be recorded against the project or unit, as applicable, prior to construction or permanent financing.
- (3f) Provision shall be made by the San Diego Housing Commission for certification of eligible tenants; and purchasers, annual certification of property owner compliance, and payment of a monitoring fee to the San Diego Housing Commission, as adjusted from time to time, for monitoring of affordable unit requirements, and any other terms that the San Diego Housing Commission determines are needed to implement the provisions and intent of this division and State law.

**§143.073025 Density Bonus Provisions**

A residential *development* proposal requesting an affordable housing *density* bonus is subject to the following:

- (a) The *development* shall be permitted a *density* bonus of the amount of units requested by the *applicant*, up to a total project dwelling unit count of 125 percent of the units permitted by the *density* regulations of the applicable base zone. For senior citizen housing meeting the criteria of Section 143.0720(c)(1), the *density* bonus shall be 20 percent.
- (b) For *development* that includes affordable housing, pursuant to the Inclusionary Housing Regulations in Chapter 14, Article 2, Division 13, and that affordable housing is located onsite, that *development* shall be



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entitled to a *density* bonus, equal to the number of affordable units provided onsite, up to a maximum of 10 percent of the pre-*density* bonus units. The increased *density* shall be in addition to any other increase in *density* allowed in this division, up to a maximum combined *density* increase of 35 percent.

- (c) For development meeting the criteria for *low income* in Section 143.0720(c)(2)(A), the *density* bonus shall be calculated as set forth in Table 143-07A. The increased *density* shall be in addition to any other increase in *density* allowed in this division, up to a maximum combined *density* increase of 35 percent. For development meeting the same criteria within the Centre City Planned District, the bonus shall apply to the maximum allowable *floor area ratio* applicable to the *development* consistent with Section 151.0310(e).
- (d) For development meeting the criteria for *very low income* in Section 143.0720(c)(2)(B), the *density* bonus shall be calculated as set forth in Table 143-07B. The increased *density* shall be in addition to any other increase in *density* allowed in this division, up to a maximum combined *density* increase of 35 percent. For development meeting the same criteria within the Centre City Planned District, the bonus shall apply to the maximum allowable *floor area ratio* applicable to the *development* consistent with Section 151.0310(e).
- (e) For development meeting the criteria for *moderate income* in Section 143.0720(d), the *density* bonus shall be calculated as set forth in Table 143-07C. The increased *density* shall be in addition to any other increase in *density* allowed in this division, up to a maximum combined *density* increase of 35 percent. For development meeting the same criteria within the Centre City Planned District, the bonus shall apply to the maximum allowable *floor area ratio* applicable to the *development* consistent with Section 151.0310(e).
- (bf) Where the applicable zone requires that each *lot* be occupied by no more than one ~~dwelling unit~~ *dwelling unit*, the *development* requires a Site Development Permit. If any deviation from the development regulations of the applicable zone is proposed, a Planned Development Permit is required.
- (eg) If the *premises* is located in two or more zones, the number of ~~dwelling units~~ *dwelling units* permitted in the *development* is the sum of the ~~dwelling units~~ *dwelling units* permitted in each of the zones. Within the *development*, the permitted number of ~~dwelling units~~ *dwelling units* may be distributed without regard to the zone boundaries.
- (eh) Where the *development* consists of two or more specifically identified parcels, whether contiguous or noncontiguous, the maximum number of

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~~dwelling units~~ *dwelling units* permitted on each parcel property is calculated based on the area of that ~~property~~ *parcel*. Within the ~~development~~, if any portion of the ~~density~~ is to be transferred between two or more separate parcels, the regulations of Section 143.0750 apply.

- (ei) Where the ~~development~~ consists of two or more noncontiguous parcels lying within two or more community planning areas, the ~~dwelling units~~ *dwelling units* reserved at levels affordable by ~~moderate income~~, ~~low-income~~ or ~~very low-income~~ households shall be distributed among community planning areas in the same proportion as the total number of ~~dwelling units~~ *dwelling units* constructed within the ~~development~~.

**§143.0730 Density Bonus in Exchange for Donation of Land**

An applicant for a tentative map, parcel map, or residential development permit, may donate land to the City for development with affordable housing units, in exchange for a density bonus, in accordance with California Government Code Section 65915, provided the land to be transferred meets the following criteria:

- (a) The site is at least 1 acre or of sufficient size to permit development of at least 40 affordable dwelling units;
- (b) The General Plan designation is appropriate for residential development;
- (c) The site is zoned to allow for the appropriate residential development;
- (d) The site is or will be served by public facilities and infrastructure adequate to serve the dwelling units; and
- (e) The land to be transferred is within the boundary of the proposed development or, if the City agrees, within one-quarter mile of the boundary of the proposed development.

**§143.0740 Additional Development Incentives for Affordable Housing Density Bonus Projects**

~~In accordance with the provisions of Government Code Section 65915, the City may grant a development incentive in addition to the 25 percent density bonus. The additional development incentive may consist of the following:~~

- (a) A density bonus of more than 25 percent; The City shall grant an incentive requested by an applicant, to the extent allowed by State law and as set forth in this Section.
  - (1) An incentive means any of the following:
    - (A) A deviation to a development regulation;

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- (B) Approval of a mixed use *development* in conjunction with the residential development if the commercial, office, or industrial uses will reduce the cost of the residential development; and if the mixed use *development* is compatible with the residential *development*; and if the mixed use *development* is compatible with the applicable land use plan;
- (C) Any other regulatory deviation proposed by the applicant, other than a waiver from a required permit, which results in identifiable, financially sufficient, and actual cost reductions.
- (2) The granting of an incentive shall not be interpreted, in and of itself, to require a General Plan amendment, zoning change, or other discretionary approval, notwithstanding Planned Development Permit Procedures (Chapter 12, Article 6, Division 6).
- (3) Nothing in this division shall be construed to require the City or any of its related legal entities, including the San Diego Housing Commission, to provide a direct financial incentive, including the provision of land, or the waiver of fees or dedication requirements.
- (4) Upon an *applicant's* request, *development* meeting the requirements of Sections 143.0720(c) or (d) shall be entitled to incentives pursuant to Section 143.0740(b) unless the City makes a written finding based upon substantial evidence, of either of the following:
  - (A) The incentive is not required in order to provide for affordable housing costs, as defined in California Health and Safety Code Sections 50052.5 and 50053.
  - (B) The incentive would have a specific adverse impact upon health and safety or the physical environment or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the *development* unaffordable to low and moderate income households.
- (b) A financial incentive consisting of: Incentives shall be granted through Process One. The number of incentives provided are identified in Table 143-07A for low income, Table 143-07B for very low income, and Table

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143-07C for *moderate income* consistent with the percentage of pre-density bonus units identified in column one of the tables.

- (1) — Fee reductions or deferrals as authorized for affordable housing in the Municipal Code; or
- (2) — Direct financing assistance from the Housing Commission, Redevelopment Agency, or other public funds, if authorized by the applicable agency on a case by case basis, or

Low Income Density Bonus  
Table 143-07A

<u>Percent</u> <u>Low Income units</u>	<u>Percent</u> <u>Density Bonus</u>	<u>Number of Incentives</u>
<u>10</u>	<u>20</u>	<u>1</u>
<u>11</u>	<u>21.5</u>	<u>1</u>
<u>12</u>	<u>23</u>	<u>1</u>
<u>13</u>	<u>24.5</u>	<u>1</u>
<u>14</u>	<u>26</u>	<u>1</u>
<u>15</u>	<u>27.5</u>	<u>1</u>
<u>16</u>	<u>29</u>	<u>1</u>
<u>17</u>	<u>30.5</u>	<u>1</u>
<u>18</u>	<u>32</u>	<u>1</u>
<u>19</u>	<u>33.5</u>	<u>1</u>
<u>20 – 29</u>	<u>35</u>	<u>2</u>
<u>≥ 30</u>	<u>35</u>	<u>3</u>

Very Low Income Density Bonus  
Table 143-07B

<u>Percent Very</u> <u>Low Income Units</u>	<u>Percent</u> <u>Density Bonus</u>	<u>Number of Incentives</u>
<u>5</u>	<u>20</u>	<u>1</u>
<u>6</u>	<u>22.5</u>	<u>1</u>
<u>7</u>	<u>25</u>	<u>1</u>
<u>8</u>	<u>27.5</u>	<u>1</u>
<u>9</u>	<u>30</u>	<u>1</u>
<u>10</u>	<u>32.5</u>	<u>2</u>
<u>11 – 14</u>	<u>35</u>	<u>2</u>
<u>≥ 15</u>	<u>35</u>	<u>3</u>

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Table 143-07C

<u>Percent Moderate Income Units</u>	<u>Percent Density Bonus</u>	<u>Number of Incentives</u>
<u>10</u>	<u>20</u>	<u>1</u>
<u>11</u>	<u>21</u>	<u>1</u>
<u>12</u>	<u>22</u>	<u>1</u>
<u>13</u>	<u>23</u>	<u>1</u>
<u>14</u>	<u>24</u>	<u>1</u>
<u>15</u>	<u>25</u>	<u>1</u>
<u>16</u>	<u>26</u>	<u>1</u>
<u>17</u>	<u>27</u>	<u>1</u>
<u>18</u>	<u>28</u>	<u>1</u>
<u>19</u>	<u>29</u>	<u>1</u>
<u>20</u>	<u>30</u>	<u>2</u>
<u>21</u>	<u>31</u>	<u>2</u>
<u>22</u>	<u>32</u>	<u>2</u>
<u>23</u>	<u>33</u>	<u>2</u>
<u>24</u>	<u>34</u>	<u>2</u>
<u>25 – 29</u>	<u>35</u>	<u>2</u>
<u>≥ 30</u>	<u>35</u>	<u>3</u>

- (c) ~~A deviation from applicable development regulations of the underlying zone pursuant to Section 143.0750, Child Care Center: Development that meets the criteria in 143.0720 and includes a child care center as defined in Section 141.0606(a)(2) as part of, or adjacent to, such development shall be entitled to an additional density bonus or incentive provided that:~~

- (1) ~~The child care center remains in operation for the greater of 30 years, or the period of time established by Section 143.0720(c)(3);~~
- (2) ~~The percentage of children from low, very low, or moderate income households attending the child care center is equal to or greater than the percentage of those same households required in the residential development;~~
- (3) ~~The additional density bonus or incentive requested is either:~~
  - (A) ~~An additional density bonus in an amount equal to the amount of square feet in the child care center up to a maximum combined density increase of 35 percent; or~~

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- (B) An additional incentive that contributes significantly to the economic feasibility of the construction of the child care center: and
- (4) The City finds, based upon substantial evidence, that the community is inadequately served by child care centers.
- (d) Parking: In addition to any other incentive, and upon the request of an applicant that proposes a development meeting the criteria of Section 143.0720(c) or (d) the City shall apply the following vehicular parking ratio, inclusive of handicapped and guest parking:
- (1) Zero to one bedroom: one onsite parking space
- (2) Two to three bedrooms: two onsite parking spaces
- (3) Four and more bedrooms: two and one-quarter parking spaces
- (4) Reductions to the parking ratios shall be granted as follows:
- (i) Development that is at least partially within a transit area as described in Chapter 13, Article 2, Division 10 (Transit Area Overlay Zone) or that is subject to Chapter 13, Article 2, Division 11 (Urban Village Overlay Zone), shall receive a 0.25 space per dwelling unit reduction in the parking ratio for the entire development.
- (ii) Development that includes dwelling units limited to occupancy by very low income households shall receive a 0.25 space reduction in the parking ratio for each dwelling unit that is limited to occupancy by a very low income household.
- (iii) Development that includes dwelling units limited to occupancy by very low income households, and is at least partially within a transit area, shall receive a 0.50 space per unit reduction in the parking ratio for each dwelling unit that is limited to occupancy by a very low income household.
- (5) For purposes of this division, a development may provide onsite parking through tandem parking or uncovered parking, but not through on-street parking or parking within a required front yard setback.

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§143.0750 ~~Deviation to Allow for Additional Development Incentive~~ Development in the Coastal Overlay Zone

An applicant may request a deviation from the applicable development regulations as an additional development incentive for affordable housing pursuant to a Site Development Permit decided in accordance with Process Four provided that the *findings* in Section 126.0504(a) and the supplemental *findings* in Section 126.0504(1) are made.

- (a) Development within the Coastal Overlay Zone that proposes to use the regulations of this division shall be subject to the applicable certified land use plan and implementing ordinances, including a Coastal Development Permit (Chapter 12, Article 6, Division 7), as described in Chapter 13, Article 2, Division 4.
- (b) The City may consider deviations from the Environmentally Sensitive Lands Regulations in Chapter 14, Article 3, Division 1 when requested by an applicant as an incentive for providing affordable housing consistent with this division, provided that the findings in Section 126.0708(b)(2) can be made.

§143.0760 ~~Deviations from Density Bonus and Affordable Housing Provisions~~

- (a) ~~A deviation from the provisions of either Section 143.0730 or Section 143.0740 may be requested in accordance with a Site Development Permit and shall require that the findings in Section 126.0504(m) be made.~~
- (b) ~~Deviations may only be considered as follows:~~
  - (1) ~~An increase in the affordable housing density bonus provisions of Section 143.0730(a) and/or decrease in the affordable housing provisions of Section 143.0740(a), may be granted where the development provides for the inclusion of dwelling units affordable by persons of very low income. The total density bonus shall not result in a development containing more than 150 percent of the units permitted by the density regulations of the base zone nor shall the affordable housing requirement provide that less than 10 percent of the total development be affordable by persons and families of very low income.~~
  - (2) ~~An increase in the affordable housing density bonus provisions of Section 143.0730(a), and/or decrease in the affordable housing provisions of Section 143.0740(a), may be granted where the development is located within a census tract where the median household income exceeds 120 percent of the citywide median household income as measured by the most recent U.S. Bureau of Census survey and the development provides for the inclusion of~~

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~~dwelling units affordable by persons of low income. The total density bonus shall not result in a development containing more than 150 percent of the units permitted by the density regulations of the applicable zone nor shall the affordable housing requirement provide that less than 10 percent of the total development be affordable by persons and families of low income.~~

**126.0708 Findings for Coastal Development Permit Approval**

An application for a Coastal Development Permit may be approved or conditionally approved only if the decision maker makes all of the *findings* in Section 126.0708(a) and the supplemental *findings* in Section 126.0708(b) that are applicable to the proposed *development*.

- (a) [no change]
- (b) Supplemental Findings - Environmentally Sensitive Lands Within the Coastal Overlay Zone
  - (1) When a deviation is requested from the Environmentally Sensitive Lands Regulations because the applicant ~~applicant~~ contends that application of the regulations would result in denial of all economically viable use, the following shall apply:
    - (A) A Coastal Development Permit ~~Any development permit or a Site Development Permit~~ in the Coastal Overlay Zone, required in accordance with Section 143.0110 because of potential impacts to environmentally sensitive lands environmentally sensitive lands where a deviation is requested in accordance with Section 143.0150 may be approved or conditionally approved only if the decision maker makes the following supplemental ~~findings~~ findings and the supplemental *findings* for deviations from the Environmentally Sensitive Lands Regulations in addition to the findings in Section 126.0708(a), (b), (c) and (d) and the supplemental ~~findings~~ findings in Section 126.0504 (b) for the applicable *development* permit(s):

~~The decision maker shall hold a public hearing on any application on a Coastal Development Permit that includes a deviation from the Environmentally Sensitive Lands Regulations in the Coastal Overlay Zone.~~

- (4i) Based on the economic information provided by the applicant applicant, as well as any other relevant evidence, each use provided for in the Environmentally Sensitive Lands Regulations



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would not provide any economically viable use of the ~~applicant's~~ applicant's property; and

- (2ii) Application of the Environmentally Sensitive Lands Regulations would interfere with the ~~applicant's~~ applicant's reasonable investment-backed expectations; and
- (3iii) The use proposed by the ~~applicant~~ applicant is consistent with the applicable zoning; and
- (4iv) The use and project design, siting, and size are the minimum necessary to provide the ~~applicant~~ applicant with an economically viable use of the ~~premises~~ premises; and
- (5v) The project is the least environmentally damaging alternative and is consistent with all provisions of the certified Local Coastal Program with the exception of the provision for which the deviation is requested.

(B) ~~The~~ Coastal Development Permit shall include a determination of economically viable use.

(C) ~~The public hearing on the Coastal Development Permit. Such hearing shall address the economically viable use determination. Prior to approving a Coastal Development Permit for development within the Coastal Overlay Zone that requires a deviation from the Environmentally Sensitive Lands Regulations, the decision maker shall make all of the following findings:~~

(D) ~~The findings~~ findings adopted by the decision making authority shall identify the evidence supporting the ~~findings~~ findings.

(2) A deviation from the Environmentally Sensitive Lands Regulations when requested as an incentive for providing affordable housing pursuant to the Affordable Housing Density Bonus Regulations in Chapter 14, Article 3, Division 7, may be approved or conditionally approved only if the decision maker makes the following supplemental findings in addition to the findings in Section 126.0708(a)(1) through (4):

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- (A) Feasible alternatives to the requested incentive and the effect of such alternatives on coastal resources have been considered;
- (B) Granting the incentive or alternative will not adversely affect coastal resources.

**§141.0310 Housing for Senior Citizens**

Housing for senior citizens may be permitted with a Conditional Use Permit decided in accordance with Process Three in the zones indicated with a "C" in the Use Regulations Tables in Chapter 13, Article 1 (Base Zones) subject to the following regulations.

- (a) [no change]
- (b) Housing for senior citizens may be permitted ~~a an affordable housing density bonus and an additional development incentive as provided in Chapter 14, Article 3, Division 7 (Affordable Housing Density Bonus Regulations). All density bonus units in excess of 25 percent of the allowable density of the base zone shall be for occupancy by very low-income Senior Citizens or very low income qualifying residents at a rent that does not exceed 30 percent of 50 percent of area median income, as adjusted for assumed household size. Proposed developments that provide daily meals in a common cooking and dining facility, and provide and maintain a common transportation service for residents, may be exempt from the affordability requirement of Chapter 14, Article 3, Division 7.~~
- (c) through (e) [no change]

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**Comparison between State Requirement and City Proposal  
for  
Moderate Income Density Bonus**

Percent Moderate Income Units	Percent Density Bonus		Number of Incentives
	State	City	
10	5	20	1
11	6	21	1
12	7	22	1
13	8	23	1
14	9	24	1
15	10	25	1
16	11	26	1
17	12	27	1
18	13	28	1
19	14	29	1
20	15	30	1
21	16	31	1
22	17	32	1
23	18	33	1
24	19	34	1
25	20	35	2
26	21	35	2
27	22	35	2
28	23	35	2
29	24	35	2
30	25	35	2
31	26	35	2
32	27	35	2
33	28	35	2
34	29	35	2
35	30	35	3
36	31	35	3
37	32	35	3
38	33	35	3
39	34	35	3
40	35	35	3

**Parking Ratios for Projects Utilizing  
Affordable Housing Density Bonus**

<b>Unit Size</b>	<b>Proposed Density Bonus <sup>1</sup></b>	<b>Citywide Requirement for Multi-family</b>	<b>Difference</b>
Studio	1.00	1.25 <sup>2</sup>	-0.25
1 bdrm.	1.00	1.50 <sup>2</sup>	-0.50
2 bdrms.	2.00	2.00	0
3 bdrms.	2.00	2.25	-0.25
4+ bdrms.	2.25 <sup>3</sup>	2.25	0

<sup>1</sup> Additional decreases allowed in the Land Development Code for very-low income and Transit and Urban Village Overlay Zone would be in addition to these reductions. Also the state regulations require that tandem parking be permitted and counted toward meeting the ratios.

<sup>2</sup> Senior Housing (maximum 1 bedroom) – 1 space/unit, or 0.7 space/unit plus 1 space/employee at peak hours.

<sup>3</sup> The state requirement is for 2.5 spaces; however it has been reduced to the citywide requirement of 2.25.

## Existing Density Bonus Projects - By Planning Areas

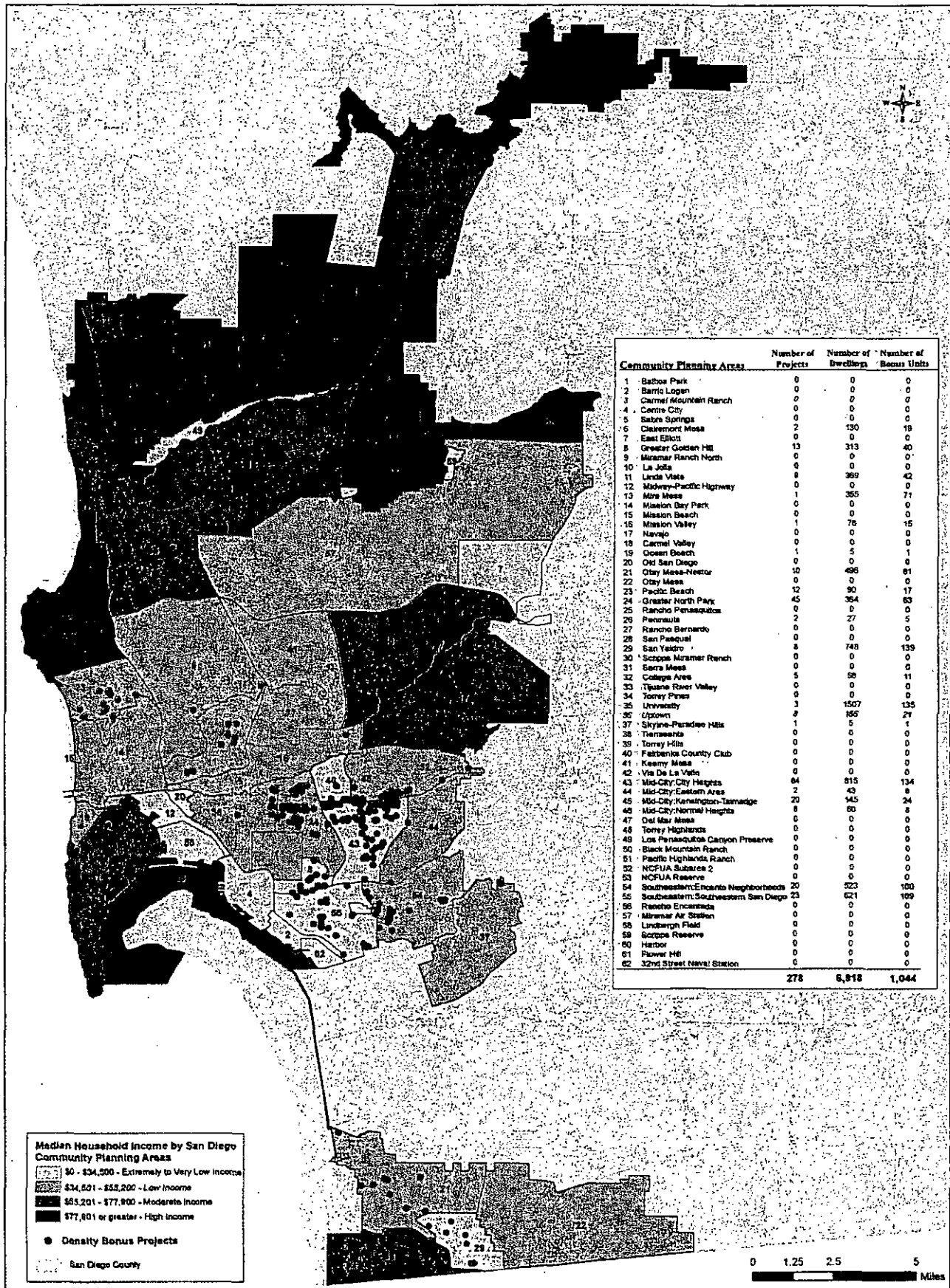
Plan Areas	Density Bonus Projects	Total Units in Project	Density Bonus Units
Barrio Logan	0	0	0
Black Mountain Ranch	0	0	0
Carmel Mountain Ranch	0	0	0
Carmel Valley	0	0	0
Clairemont Mesa	2	130	19
College Area	5	58	11
Del Mar Mesa	0	0	0
East Elliot	0	0	0
Fairbanks Country Club	0	0	0
Golden Hill	13	313	40
Kearny Mesa	0	0	0
La Jolla	0	0	0
Linda Vista	9	369	42
Mid-City	114	1,063	174
Midway-Pacific Hwy	0	0	0
Miramar Ranch North	0	0	0
Mira Mesa	1	355	71
Mission Beach	0	0	0
Mission Valley	1	78	15
Navajo	0	0	0
North Park	45	364	63
Ocean Beach	1	5	1
Old Town San Diego	0	0	0
Otay Mesa	0	0	0
Otay Mesa-Nestor	10	469	81
Pacific Beach	12	90	17
Pacific Highlands Ranch	0	0	0
Peninsula	2	27	5
Rancho Bernardo	0	0	0
Rancho Encantada	0	0	0
Rancho Peñasquitos	0	0	0
Sabre Springs	0	0	0
San Pasqual	0	0	0
San Ysidro	8	748	139
Scripps Miramar Ranch	0	0	0
Serra Mesa	0	0	0
Skyline Paradise Hills	1	5	1
Southeastern San Diego	43	1,144	209
Tierrasanta	0	0	0
Tijuana River Valley	0	0	0
Torrey Highlands	0	0	0
Torrey Hills	0	0	0
Torrey Pines	0	0	0
University	3	1,507	135
Uptown	8	166	21
Villa de la Valle	0	0	0
<b>Total</b>	<b>278</b>	<b>6,891</b>	<b>1,044</b>

Existing Density Bonus Projects  
By City Council District  
October 2006

Project Type	Council Districts								Total
	CD1	CD2	CD3	CD4	CD5	CD6	CD7	CD8	
Projects Using Density Bonus	3	15	142	43	1	12	32	30	278
Bonus Units	135	23	249	205	71	76	44	241	1,044

## Income and Density Bonus Project Distribution (2006)

City of San Diego



## Income and Density Bonus Project Distribution (2006)

City of San Diego

